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Presidential Documents

Title 3—

The President

Proclamation 7047 of November 1, 1997

National American Indian Heritage Month, 1997

By the President of the United States of America

A Proclamation

American Indians and Alaska Natives have played a vital role in the life of our country, and their many contributions have enhanced the freedom, prosperity, and greatness of America today. In celebrating National American Indian Heritage Month, we reaffirm our country's commitment to remember those contributions and to honor the unique heritage of our continent's first inhabitants.

This special observance also reflects our continuing commitment to American Indian and Alaska Native tribal governments as an integral part of the social, political, and economic fabric of the United States. The framers of our Constitution incorporated Indian nations into the political and legal framework of this country, forever joining the destiny of the tribal nations with that of the American people. By this action, our founders charged themselves and future generations with the moral obligation to guard the rights and fundamental liberties of our country's tribal peoples as zealously as we protect the rights of all Americans.

As we enter the next millennium, we have an exciting opportunity to open a new era of understanding, cooperation, and respect among all of America's people. We must work together to tear down the walls of separation and mistrust and build a strong foundation for the future. To accomplish this, we must strengthen tribal governments, improve the quality of education for American Indian and Alaska Native youth, build stable, diversified economies in tribal communities, create high-wage jobs, and ensure that all our citizens have the skills, education, and opportunities they need to reach their full potential.

The government-to-government relationship between the tribes and the United States embodies the fundamental American belief that people of widely varied and diverse cultural backgrounds can join together to build a great country. Such greatness can be sustained, however, only so long as we honor the ideals and principles upon which America is founded and abide by our commitments to all our people. In recognition of America's moral and legal obligations to American Indians and Alaska Natives, and in light of the special trust relationship between tribal governments and the Government of the United States, we celebrate National American Indian Heritage Month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1997 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–29393
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Rules and Regulations

Federal Register
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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.

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0980]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation D, Reserve Requirements of Depository Institutions, to allow U.S. branches and agencies of foreign banks and Edge and Agreement corporations to choose whether to aggregate reserve balances on a nationwide basis with a single pass-through correspondent or to continue to maintain reserve balances on a same-state/same-District basis as they do today. The amendments will also update and clarify the pass-through rules in Regulation D for all institutions. These amendments will facilitate interstate banking and branching and eliminate certain restrictions applicable to pass-through arrangements.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel, (202/452–3625) or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: To facilitate interstate banking and branching, the Federal Reserve Banks will begin to implement a new account structure in January 1998 that will provide a single Federal Reserve account for each domestic depository institution. This structure will enable the Federal Reserve Banks to establish a single debtor-creditor relationship with each chartered entity, thereby providing an effective means for Reserve Banks to carry out their risk management responsibilities, and will improve the efficiency of account management for depository institutions.[1] In August 1997, the Board proposed amendments to its Regulation D (12 CFR Part 204) that would allow U.S. branches and agencies of the same foreign bank and Edge and Agreement corporations[2] to hold all of their required reserve balances in a single account held by a pass-through correspondent or to continue to have separate accounts on a same-state/same-District basis as they do today (62 FR 42708, August 8, 1997). The proposal also would have allowed foreign bank offices and Edge corporations to choose whether to aggregate their deposit reports on a nationwide basis or to continue to report on a same-state/same-District basis.

To permit this choice for foreign bank offices and Edge corporations, the Board proposed changes to the pass-through rules in Regulation D, which would liberalize those rules for all domestic depository institutions as well as for foreign bank offices and Edge corporations. The Board also requested comment on issues relating to where all institutions should file their reports of deposit, as well as other reports.

The Board is adopting a revised version of its proposal. Under the final rule, foreign bank offices and Edge corporations will have a choice whether to aggregate required reserve balances on a nationwide basis through a pass-through arrangement or to maintain separate same-state/same-District accounts. All institutions, however, including foreign bank offices and Edge corporations, will continue to file reports of deposits and other reports with the Federal Reserve Bank in whose District they are located.

[1] To determine the Federal Reserve Bank at which a bank with interstate branches will hold an account, the Board adopted rules earlier this year to define a domestic depository institution's location for purposes of Federal Reserve membership and reserve account maintenance (62 FR 34613, June 27, 1997).

[2] Edge corporations are organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631), and Agreement corporations have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601–604a). For purposes of this docket, the term ''Edge corporation'' includes Agreement corporations.

General Comments

The Board received twelve comments on the proposed amendments to Regulation D, five from Federal Reserve Banks, three from U.S. offices of foreign banks, two from trade associations, one from a commercial bank parent of an Edge corporation, and one from a state banking supervisor. The commenters overwhelmingly supported allowing foreign bank offices and Edge corporations the option of aggregating their required reserve balances nationally or locally. The foreign bank commenters, the Edge corporation parent, and a foreign bank trade association noted that retaining the option is important to foreign banks because some offices operate independently and are not equipped to consolidate reserve balances, while other foreign bank families could operate more efficiently if reserve balances were maintained at a central location.

A state banking supervisor expressed concern that the aggregation of a foreign bank's reserve balances may appear to conflict with the separate legal status of each branch of the foreign bank and should not be allowed to affect the responsibilities of each branch to comply with any requirements under state law. The Board believes that the treatment of the reserve balances of a foreign bank family under Regulation D does not change in any way the responsibility of any individual foreign bank branch or agency to continue to meet any relevant state law requirements imposed by a state regulator, such as asset pledge, maintenance, or reserve requirements.

Section-By-Section Analysis

Section 204.3(a) Computation and Maintenance of Required Reserves

Maintenance of required reserves. Section 204.3(a) of Regulation D requires every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement Corporation to maintain reserves against its deposits and Eurocurrency liabilities and file reports in accordance with the ratios and procedures described in the regulation. The Board proposed no amendments to this provision but, as discussed below, has removed the reference to filing reports and has consolidated all reporting provisions in a single paragraph.

Reporting. Section 204.3(a) also requires foreign bank offices and Edge corporations located in the same state and same Federal Reserve District to file a single aggregated report of deposits with the Federal Reserve Bank in whose District the offices are located. The Board solicited comment on an amendment to this section to allow a foreign bank or Edge corporation family to submit an aggregated report of deposits for all U.S. offices, in the event that those foreign banks or Edge corporations chose to aggregate required reserve balances in a single account held by a pass-through correspondent.

The Board also requested comment on whether reporting changes are necessary for all depository institutions that hold their reserve balances with pass-through correspondents. Regulation D (former § 204.3(i)(2), now relocated to § 204.3(a)(2)) requires a depository institution to file its report of deposits with the Reserve Bank in whose District the institution is located, regardless of whether the institution maintains reserve balances in its own account or with a pass-through correspondent. The Reserve Bank notifies the reporting institution of its reserve requirements and also notifies the pass-through correspondent, if one exists. Each respondent is responsible for reporting; the pass-through correspondent is not responsible for reporting errors made by the respondent, but it *is* responsible for maintaining the required reserve balances in accordance with the reports. Under the proposed pass-through rules, a depository institution located in one Federal Reserve District could hold reserve balances with a pass-through correspondent whose Federal Reserve account is located in another District. (The Board has adopted this proposal, as discussed below.) In this situation, the Board noted that it may be appropriate for that depository institution's deposit reports to ''follow the money,'' that is, for the depository institution to send its deposit report to the Reserve Bank that holds the account, rather than the Reserve Bank of the institution's District. In addition, the Board requested comment on whether it is appropriate for all reports of all institutions (depository institutions as well as foreign bank offices and Edge corporations), including both supervisory and monetary reports, to go to the Reserve Bank that holds the account where that institution's reserve balances are held.

Nine of the eleven commenters discussed reporting issues. Five commenters pointed out practical problems associated with requiring reports to ''follow the money'' rather than be filed with the institution's local Reserve Bank. A trade association for foreign banks stated that, for foreign bank offices that maintained reserve balances with a single pass-through correspondent account, the effect of requiring all reports to go to the Reserve Bank that holds the account is not clear. The commenter was concerned, for example, about how the Reserve Bank receiving the reports would coordinate with the Reserve Bank that supervises the local office, as well as the effect the unified reporting system would have on coordinated supervision between federal and state regulators. A foreign bank commenter stated that consolidation of all reports could result in a lack of understanding of the foreign bank office's condition by its supervising Reserve Bank and *de facto* double reporting requirements for the office. A Reserve Bank noted that allowing aggregate reporting for these foreign bank offices would make it difficult to verify reports on a timely basis, would require close coordination between Reserve Banks, and could affect the accuracy of data on the various separately chartered offices. One bank trade association, one Edge corporation parent, and two Reserve Banks supported the proposal to allow foreign bank offices and Edge corporations to file a single aggregated report of deposits, although one of those Reserve Banks argued against requiring domestic pass-through respondents to file deposit reports with their out-of-District correspondent's Reserve Bank.

The commenters also identified problems with the ''follow the money'' approach for domestic institutions that hold reserve balances with a pass-through correspondent. For example, one commenter stated that, although requiring all reports to go to the Federal Reserve Bank that holds the correspondent's account could provide an efficient means of administering reserve requirements, it would also require Reserve Banks to dedicate resources to analyzing nonlocal banks' structure, operations, and financial statements. The commenter stated that the alternative of ''split reporting'' (sending deposit reports to the account-holding Reserve Bank and all other reports to the local Reserve Bank) could lead to confusion and inefficiencies and that another alternative, filing all reports with multiple Reserve Banks, would place additional burden on depository institutions. Two other commenters stated that another reason the reporting location should not be based on the location of a pass-through correspondent is because pass-through arrangements can change frequently.

Although the Board believes that requiring reports to follow the money might provide an efficient means of administering reserve requirements, any potential efficiencies appear to be outweighed by the practical difficulties involved when deposit (or all) reports are submitted to a Reserve Bank other than the reporting institution's local Reserve Bank. If the Reserve Bank in whose District the institution is located is responsible for supervising the institution, submitting supervisory reports to another Reserve Bank could affect the depth and timeliness of the supervising Reserve Bank's knowledge of the institution's condition. Split reporting would lead to inefficiencies in other areas for both the institution and the Federal Reserve Banks. The reporting institution would have to deal with more than one Reserve Bank on reporting and data editing issues. For the Federal Reserve, each Reserve Bank collecting data from a particular institution would have to become knowledgeable about that institution's structure, operations, and balance sheet in order to perform effective data editing and analysis.

In light of these problems, the Board is retaining the current reporting requirements for domestic institutions as well as foreign bank offices and Edge corporations. The Board has consolidated the reporting provisions in new § 204.3(a)(2). All reporting institutions will file deposit and other reports with the Federal Reserve Bank in whose District the institution is located. Foreign bank and Edge corporation offices operating in the same state and same District will file an aggregated report as they do today. The reporting rule does not affect an institution's ability to pass its reserve balances through a correspondent, which may be located in the same or another District. For example, a foreign bank family will be able to consolidate required reserve balances with a single pass-through correspondent while still reporting deposits on a same-state same-District basis.

One commenter asked the Board to clarify that, in the case of Edge corporations, the reporting aggregation applies to the offices of a single Edge corporation and not the offices of all Edge corporations owned by a single parent that operate in the same state and same District. The provisions of § 204.3(a)(2) on aggregated reporting apply to all offices of a single Edge corporation operating in the same state and same District, not to all offices owned by a common parent.

Low Reserve Tranche and Exemption Amounts. Regulation D provides that foreign bank and Edge corporation families share one low reserve tranche and exemption amount among all related offices.[3] The pre-amendment Regulation D set out separate provisions (§ 204.3(a)(1) and (a)(2)) for foreign banks and Edge corporations covering allocation of the low reserve tranche and contained a separate provision (§ 204.3(a)(3)) on allocation of the reserve exemption, which applied to depository institutions as well as foreign bank offices and Edge corporations. The Board proposed a new § 204.3(a)(2) to combine the existing provisions on allocation of the low reserve tranche and the reserve exemption among branches of depository institutions, foreign bank offices, and Edge corporations.

The Board received one comment on this proposed amendment, in favor of the revision. The Board has adopted the amendment as proposed. Under the amendment, a depository institution and its branches, foreign bank families, and offices of an Edge corporation will continue to share one low reserve tranche and one reserve exemption and can allocate the tranche and exemption among offices or groups of offices that file separate deposit reports.[4]

Section 204.3(b) Form and Location of Reserves

In June 1997, the Board amended § 204.3(b) to set forth where a domestic depository institution is located for purposes of determining the Federal Reserve Bank where the institution will maintain its reserve balances (see footnote 1). Specifically, an institution is considered to be located in the Federal Reserve District specified in its charter or organizing certificate, or, if no such location is specified, the location of its head office. The Board can make exceptions to the general rule for a particular institution after considering certain criteria. The Board proposed to apply the same rule to foreign bank offices and Edge corporations. For foreign banks and Edge corporations that pass all reserve balances through a single correspondent, the location of the pass-through correspondent would determine which Reserve Bank holds the account. The Board also proposed to remove the sentence in § 204.3(b)(1) that stated that reserves that were held on a pass-through basis were considered to be a balance maintained with a Reserve Bank. This sentence could be read to conflict with the Board's proposed revisions to the pass-through rules clarifying that the balances held in the account of the pass-through correspondent were the property of the correspondent.

The Board received one comment on these provisions, supporting the proposal. The Board has adopted the proposed amendments and has also revised the language in § 204.3(b)(1) to clarify that only non-member institutions may hold reserves with a pass-through correspondent.[5]

Section 204.3(i) Pass-Through Rules

Eligible Pass-Through Correspondents. Former § 204.3(i)(1) stated that foreign bank offices and Edge corporations could pass their reserve balances through an account of another office of the same institution, subject to the pass-through rules applicable to all depository institutions. This provision could have been interpreted to preclude these institutions from using an unaffiliated pass-through correspondent. The Board proposed to clarify that a foreign bank or Edge corporation family may choose any eligible institution as a pass-through correspondent, such as a domestic depository institution or a office of another foreign bank, in addition to an office of its own family. Although the Board believes that these entities will generally choose one of their own offices as the pass-through correspondent, allowing the choice is comparable to the treatment of domestic depository institutions under Regulation D. The Board received two comments on this amendment, both in support, and has adopted it as proposed. The Board has also revised § 204.3(i)(1) to provide that a Reserve Bank may make exceptions to the requirement that an institution can choose only one pass-through correspondent. Such an exception may be necessary, for example, during a transition period after the merger of two respondents with two different pass-through correspondents.

Account Maintenance. Former § 204.3(i) required a pass-through correspondent to maintain accounts at each Federal Reserve Bank in whose District the respondent institutions were located. The Board proposed to remove the requirement that pass-though reserve balances must be held in the District where the respondent is located. This proposal was necessary to enable foreign bank families and Edge corporations to aggregate their required reserve balances in a single account held by a pass-through correspondent. The proposed amendment applied to pass-through arrangements for all domestic depository institutions as well. The Board received two comments that specifically discussed this amendment; both supported the change, citing improved efficiency and removal of impediments to interstate banking. The Board has adopted the amendment as proposed.

Former Regulation D also provided that, when respondents are located in the same District as the pass-through correspondent, the correspondent may choose to maintain its own reserve balances and the pass-through reserve balances in a single commingled account or in two separate accounts. Under the Board's proposal, correspondents would hold pass-through balances in a single commingled account, along with the pass-through correspondent's own reserve balances (if any) at the Reserve Bank in whose District the pass-through correspondent is located. The Board requested comment on whether correspondents should continue to have the option of separate accounts for their own reserve balances and the reserve balances they hold on a pass-through basis. The Board received two comments on this issue, both from Federal Reserve Banks. One commenter suggested that the Board allow correspondents to retain the option to have a separate account for pass-through reserve balances because the Federal Reserve Banks' subaccount structure does not provide account-holders with a daily ending balance for each subaccount. The other commenter stated that there is no need for a correspondent to maintain pass-through reserve balances in separate account from its own reserve balances and that the subaccount structure will provide the correspondent with sufficient information to segregate its own reserve balances from pass-through balances. The Board continues to believe the subaccount will suffice for tracking respondent activity and that correspondents will be able to calculate the ending balance for subaccounts based on the information they receive. The Board, therefore, has adopted the proposed provision that a correspondent maintain a single account for its own reserve balances (if any) and the pass-

[3] The amount of an institution's net transaction accounts in the low reserve tranche ($0 to $49.3 million) carries a lower reserve requirement (3 percent) than the amount above the tranche (which carries a 10 percent requirement). The first $4.4 million of any institution's reservable liabilities are exempt from reserve requirements.

[4] Ordinarily, branches of a domestic depository institution would not file separate deposit reports unless they are in transition (for example, after a merger or other consolidation) from a multiple to a single reporting and account structure.

[5] This limitation is set forth in section 19(c)(1) of the Federal Reserve Act, 12 U.S.C. 461(c).

through reserve balances of respondents. The Board has, however, added a provision to allow a Reserve Bank to make an exception to this rule. The Board anticipates that a Reserve Bank might permit an exception in cases where, for example, the correspondent is involved in a merger and holds a separate transition account at the same or another Reserve Bank.

Former Regulation D was unclear as to whose money is in the account that contains the pass-through reserve balances, that is, whether the account is a Reserve Bank liability to the pass-through correspondent or to the respondent.[6] The Board proposed amendments to § 204.3(i) to clarify that the balances held by the pass-through correspondent are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the reserve balances of another office or institution that have been passed through the correspondent. The Board received two comments on this proposal, both in favor, and has adopted the amendment as proposed.

Services. Former § 204.3(i)(5) contained provisions regarding the services available to pass-through correspondents and respondents. The Board proposed to remove these provisions from Regulation D. The terms of services offered by the Reserve Banks are covered in Regulation J (12 CFR part 210) and the Reserve Banks' operating circulars. The Board received one comment on this proposal, in support of the change. The Board has eliminated this provision, as proposed.

Technical Changes

The Board also proposed editorial and conforming amendments to §§ 204.3(i) and 204.9(b) of Regulation D. The Board received no comments on these changes. Because of the addition of the consolidated reporting provision in § 204.3(a), the technical amendment to a cross-reference in § 204.9(b) is no longer necessary. The Board has adopted the editorial changes to § 204.3(i) as proposed.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The final amendments will apply to all depository institutions, U.S. branches and agencies of foreign banks, and Edge and Agreement corporations, regardless of size, and represent changes to the existing rules that should reduce burden for those institutions that are part of a pass-through arrangement for the purpose of maintaining required reserve balances. The amendments would increase flexibility for those institutions by eliminating restrictions on where pass-through correspondents must maintain accounts. The amendments should not have a negative economic impact on small institutions, and, therefore, there were no significant alternatives that would have minimized the economic impact on those institutions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The proposed rule contained no new collections of information and proposed no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act. However, one of the changes in the proposed rule had the potential to reduce reporting burden for a subset of respondents on existing information collections by allowing fewer reports. The change would have granted Edge corporations and U.S. branches and agencies of foreign banks the option to file single reports of deposits and Eurocurrency data aggregated nationwide. Currently these respondents file deposits and Eurocurrency reports aggregated by each state and Federal Reserve District in which their offices are located.

None of the comments received specifically addressed reporting burden. However, as discussed earlier in this notice, several commenters raised problems associated with not filing the reports with each individual respondent's Federal Reserve District. The Board believes that these problems outweigh any potential efficiencies afforded by such changes. The final rule does not contain any of the proposed elective changes in reporting. Therefore, no collections of information pursuant to the Paperwork Reduction Act are revised by the final rule.

List of Subjects in 12 CFR Part 204

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 204 is amended as set forth below.

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.3, paragraphs (a), (b)(1), (b)(2)(i), and (i) are revised to read as follows:

§ 204.3 Computation and maintenance.

(a) *Maintenance and reporting of required reserves.* (1) *Maintenance.* A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or Agreement corporation shall maintain reserves against its deposits and Eurocurrency liabilities in accordance with the procedures prescribed in this section and § 204.4 and the ratios prescribed in § 204.9. Reserve-deficiency charges shall be assessed for deficiencies in required reserves in accordance with the provisions of § 204.7. For purposes of this part, the obligations of a majority-owned (50 percent or more) U.S. subsidiary (except an Edge or Agreement corporation) of a depository institution shall be regarded as obligations of the parent depository institution.

(2) *Reporting.* (i) Every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement corporation shall file a report of deposits (or any other required form or statement) directly with the Federal Reserve Bank of its District, regardless of the manner in which it chooses to maintain required reserve balances. A foreign bank's U.S. branches and agencies and an Edge or Agreement corporation's offices operating within the same state and the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(ii) A Federal Reserve Bank shall notify the reporting institution of its reserve requirements. Where a pass-through arrangement exists, the Reserve Bank will also notify the pass-through correspondent of its respondent's required reserve balances.

[6] The call report instructions are more clear, stating that, from the perspective of the Federal Reserve Bank, pass-through balances are treated as balances due to the correspondent, not to the respondent.

(iii) The Board and the Federal Reserve Banks will not hold a pass-through correspondent responsible for guaranteeing the accuracy of the reports of deposits submitted by its respondents.

(3) *Allocation of low reserve tranche and exemption from reserve requirements.* A depository institution, a foreign bank, or an Edge or Agreement corporation shall, if possible, assign the low reserve tranche and reserve requirement exemption prescribed in § 204.9(a) to only one office or to a group of offices filing a single aggregated report of deposits. The amount of the reserve requirement exemption allocated to an office or group of offices may not exceed the amount of the low reserve tranche allocated to such office or offices. If the low reserve tranche or reserve requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche or exemption may be assigned to other offices or groups of offices of the same institution until the amount of the tranche (or net transaction accounts) or exemption (or reservable liabilities) is exhausted. The tranche or exemption may be reallocated each year concurrent with implementation of the indexed tranche and exemption, or, if necessary during the course of the year to avoid underutilization of the tranche or exemption, at the beginning of a reserve computation period.

(b) *Form and location of reserves.* (1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or Agreement corporation shall hold reserves in the form of vault cash, a balance maintained directly with the Federal Reserve Bank in the Federal Reserve District in which it is located, or, in the case of nonmember institutions, with a pass-through correspondent in accordance with § 204.3(i).

(2) (i) For purposes of this section, a depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation is located in the Federal Reserve District that contains the location specified in the institution's charter, organizing certificate, or license or, if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (b)(2)(ii) of this section.

* * * * *

(i) *Pass-through rules.* (1) *Procedure.* (i) A nonmember depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation required to maintain reserve balances (respondent) may select only one institution to pass through its required reserve balances, unless otherwise permitted by Federal Reserve Bank in whose district the respondent is located. Eligible institutions through which respondent required reserve balances may be passed (correspondents) are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, and depository institutions, U.S. branches or agencies of foreign banks, and Edge and Agreement corporations that maintain required reserve balances at a Federal Reserve office. In addition, the Board reserves the right to permit other institutions, on a case-by-case basis, to serve as pass-through correspondents. The correspondent chosen must subsequently pass through the required reserve balances of its respondents directly to a Federal Reserve Bank. The correspondent placing funds with a Federal Reserve Bank on behalf of respondents will be responsible for account maintenance as described in paragraphs (i)(2) and (i)(3) of this section.

(ii) Respondents or correspondents may institute, terminate, or change pass-through arrangements for the maintenance of required reserve balances by providing all documentation required for the establishment of the new arrangement or termination of the existing arrangement to the Federal Reserve Banks involved within the time period provided for such a change by those Reserve Banks.

(2) *Account maintenance.* A correspondent that passes through required reserve balances of respondents shall maintain such balances, along with the correspondent's own required reserve balances (if any), in a single commingled account at the Federal Reserve Bank in whose District the correspondent is located, unless otherwise permitted by the Reserve Bank. The balances held by the correspondent in an account at a Reserve Bank are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the reserve balances of another institution that have been passed through the correspondent.

(3) *Responsibilities of parties.* (i) Each individual depository institution, U.S. branch or agency of a foreign bank, or Edge or Agreement corporation is responsible for maintaining its required reserve balance either directly with a Federal Reserve Bank or through a pass-through correspondent.

(ii) A pass-through correspondent shall be responsible for assuring the maintenance of the appropriate aggregate level of its respondents' required reserve balances. A Federal Reserve Bank will compare the total reserve balance required to be maintained in each account with the total actual reserve balance held in such account for purposes of determining required reserve deficiencies, imposing or waiving charges for deficiencies in required reserves, and for other reserve maintenance purposes. A charge for a deficiency in the aggregate level of the required reserve balance will be imposed by the Reserve Bank on the correspondent maintaining the account.

(iii) Each correspondent is required to maintain detailed records for each of its respondents in a manner that permits Federal Reserve Banks to determine whether the respondent has provided a sufficient required reserve balance to the correspondent. A correspondent passing through a respondent's reserve balance shall maintain records and make such reports as the Board or Reserve Bank requires in order to insure the correspondent's compliance with its responsibilities for the maintenance of a respondent's reserve balance. Such records shall be available to the Reserve Banks as required.

(iv) The Federal Reserve Bank may terminate any pass-through relationship in which the correspondent is deficient in its recordkeeping or other responsibilities.

(v) Interest paid on supplemental reserves (if such reserves are required under § 204.6) held by a respondent will be credited to the account maintained by the correspondent.

By order of the Board of Governors of the Federal Reserve System, October 30, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–29203 Filed 11–4–97; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052–AB64

Loan Policies and Operations; Definitions; Loan Underwriting; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 614 and 619 on

September 30, 1997 (62 FR 51007). The final rule amends the regulations relating to loan underwriting in response to comments received from the FCA Board's initiative to reduce regulatory burden and in an effort to streamline the regulations and set clear minimum regulatory standards where appropriate. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is November 5, 1997.

EFFECTIVE DATE: The regulation amending 12 CFR parts 614 and 619 published on September 30, 1997 (62 FR 51007) is effective November 5, 1997.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

Joy E. Strickland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: October 31, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–29272 Filed 11–4–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–23–AD; Amendment 39–10195; AD 97–23–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2 and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter Deutschland GmbH (Eurocopter) Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, that establishes a new retirement life for the clutch and requires an entry into the Accessory Replacement Record indicating the new life limit. This amendment is prompted by a recalculation of life limitations by the part manufacturer, Warner Electric. The clutch manufacturer used the airframe load spectrum to establish the new life limit of 3,600 hours time-in-service (TIS). The actions specified by this AD are intended to prevent failure of the clutch, loss of power to the main rotor and a subsequent forced landing of the helicopter.

EFFECTIVE DATE: December 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Lance T. Gant, Aerospace Engineer, FAA, Rotorcraft Standards Staff, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5114, fax (817) 222–5961.

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 Eurocopter Deutschland GmbH (Eurocopter) Model MBB-BK 117 A-1, A–3, A–4, B–1, B–2, and C–1 helicopters was published in the **Federal Register** on February 4, 1997 (62 FR 5186). That action proposed to establish a new retirement life for the clutch and to require an entry into the Accessory Replacement Record indicating the new life limit.

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

The one commenter asked for a delay in the issuance of this AD until Warner Electric established a new retirement life on the affected clutch. The commenter indicated that an extended retirement life would be prepared by the clutch manufacturer by the end of May, 1997. To date, the FAA has received no further information about an extension to the retirement life of the clutch.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for some non-substantive word changes, insertion of Note 3 referencing the Luftfahrt-Bundesamt (LBA) AD, and correction of the part number in paragraph (b). The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of this AD.

The FAA estimates that 130 helicopters of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $873,600.

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.

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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

AD 97–23–07 Eurocopter Deutschland GmbH: Amendment 39–10195. Docket No. 96–SW–23–AD.

Applicability: Model MBB–BK 117 A–1, A–3, A–4, B–1, and B–2 helicopters, serial numbers (S/N) 7001 through 7250, and Model MBB–BK 117 C–1 helicopters, S/N 7500 through 7520, with clutch, part number (P/N) 4639302044 or P/N CL42067–1, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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) 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 helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the clutch, loss of power to the main rotor and a subsequent forced landing of the helicopter, accomplish the following:

(a) Within 30 hours time-in-service (TIS) after the effective date of this AD, make an entry into the Accessory Replacement Record to reflect a new life limit of 3,600 hours TIS for the clutch, P/N 4639302044 or P/N CL42067–1.

(b) Remove the clutch, P/N 4639302044 or P/N CL42067–1, from service on or before reaching 3,600 hours TIS. This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the clutch, P/N 4639302044 or P/N CL42067–1, of 3,600 hours TIS.

(c) Replacement of the clutch, P/N 4639302044 or P/N CL42067–1, with a clutch, P/N 4639202011, constitutes a terminating action for the requirements of this AD.

(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, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

(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 helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on December 10, 1997.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Germany) AD 95–242, dated June 13, 1995.

Issued in Fort Worth, Texas, on October 30, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–29238 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–05–AD; Amendment 39–10194; AD 97–23–06]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, A–1, B, and C, and TH–55A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Schweizer Aircraft Corporation Model 269A, A–1, B, and C, and TH–55A helicopters, with a certain main rotor transmission ring gear (ring gear) installed, that requires inspections of the ring gear teeth for surface deterioration which includes pitting, excessive wearing, cracking or corrosion, and replacement of the ring gear if such ring gear teeth surface deterioration is found; and also requires creating a main rotor transmission component log card (log card), if none is available, and making a notation on the log card if a ring gear is changed. This amendment is prompted by reports of failures of the ring gear due to single tooth distress as a result of improper gear tooth spacing during the manufacturing of the ring gear. The actions specified by this AD are intended to prevent failure of the ring gear, loss of drive to the main rotor gearbox, and a subsequent forced landing.

DATES: Effective December 10, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 10, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, NY 14902, ATTN: Publications Dept. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, New York Aircraft Certification Office, FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581, telephone (516) 256–7532, fax (516) 568–2716.

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 Schweizer Aircraft Corporation Model 269A, A–1, B, and C, and TH–55A helicopters was published in the **Federal Register** on November 4, 1996 (61 FR 56640). That action proposed to require inspections of the ring gear teeth for pitting, wearing, cracking or corrosion, and replacement of the ring gear if such ring gear teeth surface deterioration is found. The proposed inspections would be accomplished before further flight if clicking, tapping, or other unusual noises, or unusual vibration is detected while operating the helicopter, or if metal particles are found on the magnetic drain plug during routine maintenance; or, upon installation of replacement transmissions with the affected ring gear; and within the next 50 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first. Thereafter, the notice proposes repetitive inspections at intervals not to exceed 50 hours TIS in accordance with the manufacturer's service bulletin.

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

The one commenter states that all ring gears, P/N 269A5104–005, should not be affected by the AD, but that only ring gears, P/N 269A5104–005, manufactured by Eastern Gear Corporation (EGC) and ACR Industries (ACR), should be affected. The same commenter also states that the use of the term ''wearing'' in the proposed AD needs further amplification because all gear teeth will exhibit wear after some time in service. This wear is normally very minor, but the inference of the proposed AD could lead one to believe that ANY wear is unacceptable. The FAA concurs with both comments and the requirements of this AD are changed accordingly. The applicability paragraph has been revised to specify only those gears manufactured by EGS and ACR. The word ''excessive'' has been added before the word ''wearing'' since all gears will experience some wear after some time in service. The inspection for wear, including what constitutes ''excessive wear'', is contained in the Basic Helicopter Maintenance Instructions, Section 10, which is referenced in Schweizer

Service Bulletin B–244.2, dated February 19, 1996.

Additionally, since the issuance of the proposal, the manufacturer received a report of a failure of a ring gear, P/N 269A5104–7, which is the same part-numbered ring gear specified in the proposal as an airworthy replacement. Since that report, the manufacturer has changed the material properties in the manufacturing of ring gears beginning with serial number S2100 or higher. Therefore, the AD is changed to specify that only ring gears, P/N 269A5104–7, S/N S2100 or higher, are acceptable as replacements.

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 described previously and with other non-substantive changes. 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 87 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the initial inspections, 0.5 hours to create a main rotor transmission component log card, and 28 work hours if removal and replacement of the ring gear is required, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,400 per ring gear and $1,219 per overhaul kit. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $822,063, assuming creation of a component log card and replacement of the ring gear in the entire fleet is necessary.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 97–23–06 Schweizer Aircraft Corporation: Amendment 39–10194. Docket No. 96–SW–05–AD.

Applicability: Model 269A, A–1, B, and C, and TH–55A helicopters, with main rotor transmission ring gear (ring gear), part number (P/N) 269A5104–5, identified by the letters EGC (Eastern Gear Corporation), ACR (ACR Industries), or the manufacturer code number 23751 (EGC) or 57152 (ACR), installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 (f) 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 helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ring gear, loss of drive to the main rotor gearbox, and a subsequent forced landing, accomplish the following:

(a) Inspect the ring gear teeth for surface deterioration which includes pitting, excessive wearing, cracking or corrosion in accordance with Schweizer Service Bulletin B–244.2, dated February 19, 1996, as follows:

(1) Before further flight, if a clicking or tapping sound or other unusual noise or unusual vibration is detected while operating the helicopter, or if a metal particle is found on the magnetic drain plug during routine maintenance;

(2) Before installing a main rotor transmission which contains an affected ring gear on the helicopter;

(3) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, or at the next annual inspection, whichever occurs first.

(b) Thereafter, inspect the ring gear teeth at intervals not to exceed 50 hours TIS in accordance with Schweizer Service Bulletin B–244.2, dated February 19, 1996.

(c) If surface deterioration which includes pitting, excessive wearing, cracking or corrosion is discovered, before further flight, remove the transmission from service and replace the ring gear with a ring gear, P/N 269A5104–7, serial number (S/N) S2100 or higher number.

(d) At the next main rotor transmission overhaul, remove and replace the ring gear, P/N 269A5104–5, identified on the face of the ring gear by the letters EGC, ACR, or the manufacturer code number 23751 (EGC) or 57152 (ACR) and replace it with a ring gear, P/N 269A5104–7, S/N S2100 or higher number.

(e) Installation of a ring gear, P/N 269A5104–7, S/N S2100 or higher number constitutes a terminating action for the requirements of this AD and must be annotated on a component log card. A new component log card must be created if a component log card is not in the applicable maintenance records.

(f) 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, New York Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York 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 New York Aircraft Certification Office.

(g) 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 helicopter to a location where the requirements of this AD can be accomplished, provided no clicking or tapping sound or other unusual noise or unusual vibration was detected on any previous flight.

(h) The inspections shall be done in accordance with Schweizer Service Bulletin B–244.2, dated February 19, 1996. 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 Schweizer Aircraft Corporation, P.O. Box 147, Elmira, NY 14902, ATTN: Publications Dept. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort

Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 10, 1997.

Issued in Fort Worth, Texas, on October 30, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–29237 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 97–AGL–59]

Modification of Class D Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reinstates controlled airspace extending upward from the surface at Minot Air Force Base (AFB), ND. The airspace areas are necessary to accommodate precision standard instrument approach procedures (SIAP) serving Minot AFB. The affected airspace, formerly surface area extensions to the Minot AFB Control Zone, was inadvertently omitted from United States controlled airspace during Airspace Reclassification in 1993. This action corrects that omission.

DATES: Effective date: November 5, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7573.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by reinstating controlled airspace extending upward from the surface at Minot AFB, ND. The affected airspace, formerly surface area extensions to the Minot AFB Control Zone, was inadvertently omitted from United States controlled airspace during Airspace Reclassification in 1993. This action corrects that error.

Federal Aviation Administration (FAA) Order 7400.6G, dated September 4, 1990, and now obsolete, described a Control Zone serving Minot AFB which consisted of a circle with a 5 Statute Mile (SM) radius and two extensions, one to the southeast and one to the northwest, each of which was 5 SM wide and extended from the radius to 7 SM southeast and northwest respectively of the Deering Tactical Air Navigation (TACAN) facility. The Deering TACAN is located near the center of the 5 SM radius circle. The Minot AFB Control Zone, as described in FAA Order 7400.6G, was established by a final rule published in the **Federal Register** on August 12, 1970 (35 FR 12751).

In accordance with the Airspace Reclassification final rule published December 17, 1991, and effective September 16, 1993 (56 FR 65638), distances were converted from SM to Nautical Miles (NM), and Control Zones were generally redesignated as Class D airspace areas, and most Control Zone extensions were redesignated as Class E airspace areas.

In preparation for Airspace Reclassification, the FAA redrafted the legal descriptions of all airspace areas under United States jurisdiction. Part of this process involved dividing Control Zones into Class D and E airspace areas where necessary. In redrafting the legal description for the Minot AFB Control Zone, the FAA redesignated the 5 SM-radius circle as a 4.5 NM-radius Class D airspace area. The FAA did not, however, redesignate the Control Zone extensions as Class E airspace areas. This omission was unintentional as the surface area extensions remained, and continue to be, necessary to accommodate SIAP's serving Minot AFB. The FAA has never purposely and affirmatively acted to revoke the controlled airspace.

The fact that the Control Zone extensions were not redesignated as Class E airspace, and that consequently the affected areas are currently Class G airspace, was discovered in a recent joint FAA/Air Force review of the airspace requirements for Minot AFB. As a result of the discovery, the FAA and the Air Force have been forced to discontinue use of all precision SIAP's serving Minot AFB pending reinstatement of the controlled airspace areas.

The precision SIAP's at Minot AFB serve important flight safety and national security interests. Airspace standards, however, require that the SIAP's be contained entirely within controlled airspace. The FAA finds that the safety and national security concerns created by the lack of a precision SIAP at Minot AFB, combined with the fact that the agency did not intend to permit the affected airspace to revert to uncontrolled status, makes notice and public procedure under 5 U.S.C 553(b) impractical and contrary to the public interest. Furthermore, for the reasons listed above, the FAA finds that good cause exists, pursuant to 5 U.S.C. 553(d), to make this amendment effective in less than 30 days.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class D airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D airspace areas in order to promote the safe and efficient handling of air traffic in these areas.

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

List of Subjects in 14 CFR Part 71

Airspace, 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL ND D Minot AFB, ND [Revised]

Minot AFB, ND
(lat. 48°24′56″N, long. 101°21′28″W)
Deering TACAN
(lat. 48°24′54″N, long. 101°21′54″W)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 4.5-mile radius of Minot AFB, and within 2.2 miles each side of the Deering TACAN 113° radial extending from the 4.5-mile radius to 6.1 miles southeast of the TACAN, and within 2.2 miles each side of the Deering TACAN 303° radial, extending from the 4.5-mile radius to 6.1 miles northwest of the TACAN. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines Illinois on October 14, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–29195 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket OST–96–1145 [49812]]

RIN 2105–AC35

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary (DOT).

ACTION: Final rule.

SUMMARY: The Department is adopting a rule that will prohibit each computer reservations system (CRS) from adopting or enforcing contract clauses that bar a carrier from choosing a level of participation in that system that would be lower than the carrier's level of participation in any other system, if neither the carrier nor any affiliate of the carrier owns or markets a CRS. The Department believes that this rule is necessary to promote competition in the CRS and airline industries, since the contract clauses at issue unreasonably limit the ability of airlines without CRS interests to choose how to distribute their services through travel agencies. This rule will allow a CRS to enforce such a contract clause against an airline that owns or markets a competing CRS or that has an affiliate that owns or markets a CRS. The Department is acting on a rulemaking petition filed by Alaska Airlines.

DATES: This rule is effective December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION:

Introduction

Almost all airlines in the United States depend heavily on travel agencies for the distribution of their services, and travel agencies in turn rely heavily on computer reservations systems (CRSs) in responding to their customers' requests for information on airline services and for booking seats. The large majority of travel agencies use only one CRS (the agencies using a system are called ''subscribers''). As a result, virtually every airline must make its services available through each of the four CRSs operating in the United States in order to distribute its services through the travel agencies using each system (the airlines that make their services available through a system are called ''participating airlines''). Because each airline must participate in each system, the systems do not compete with each other for airline participants and have long been able to dictate the terms for participation (in contrast, the systems compete for travel agency users). Each of the systems is controlled by one or more airlines or airline affiliates, which can use their market power over airline participants to distort airline competition. We therefore have rules regulating CRS operations. 14 CFR Part 255, adopted by 57 FR 43780, September 22, 1992, after publication of a notice of proposed rulemaking, 56 FR 12586, March 26, 1991.

Alaska Airlines asked us to amend those rules by adding a prohibition of parity clauses—contract terms imposed by three of the four CRSs operating in the United States that require a participating airline to purchase at least as high a level of service from it as the airline does from any other system. We issued a notice of proposed rulemaking that tentatively determined to adopt such a rule. 61 FR 42197, August 14, 1996. Our proposed rule stated: ''No system may require a carrier to maintain any particular level of participation in its system on the basis of participation levels selected by that carrier in any other system.'' We tentatively determined that the proposed rule would make airline operations more efficient and promote competition in the CRS and airline industries.

However, airlines that own or market a CRS (or have an affiliate that does so) may limit their participation in a competing system in order to frustrate that system's ability to obtain travel agency subscribers. Our notice therefore asked whether we should allow a system to enforce a parity clause against an airline that owned or marketed a competing system.

After considering the comments and reply comments, we have determined to prohibit parity clauses, subject to an exception allowing a system to impose such a clause on an airline that owns or markets a competing system (this reference to airlines that own or market a system, and other such references in this document, include airlines with affiliates that own or market a system). Since the parity clauses are currently injuring some carriers, we are making a final decision now on Alaska's rulemaking petition rather than waiting for the completion of other pending CRS proceedings.

As explained in more detail below, parity clauses cause airlines either to buy more CRS services than they wish to buy from some systems or to stop buying services from other systems that they would like to buy, which creates economic inefficiencies and injures airline competition. In addition, the clauses eliminate competition between the systems for higher levels of participation. Without the clauses, such competition would exist, since the airlines' need to participate in systems does not compel them to buy the higher levels of service from each system. For these reasons the Department of Justice, several smaller airlines, and the CRS that does not use a parity clause, Galileo, support our proposal.

We have considered the arguments made by the parties opposing the proposal, but we have determined that the rule would benefit competition and airline efficiency. None of the opponents denies that the parity clauses compel airlines to buy services that they do not want and that the clauses provide no significant benefit to airlines. We also conclude that our rule will not adversely affect travel agencies. Each airline's interest in facilitating travel agency sales of its services should ensure that no important airline will reduce its participation in any system by enough to seriously interfere with the efficiency of travel agency operations.

By adopting this rule we are following our long-standing policy of promoting the ability of airlines to choose how they will distribute information on their services and enable travel agencies to carry out booking and ticketing transactions through electronic means. Parity clauses unreasonably interfere with the ability of individual airlines without CRS ties to choose the level of CRS service they will buy and to choose how best to communicate with travel

agencies in distributing their services, and this harm is not offset by any competitive benefits. Our prohibition of airline parity clauses, moreover, is consistent with our existing rule prohibiting the use of parity clauses in travel agency CRS contracts, 14 CFR 255.8(b). We prohibited parity clauses in travel agency contracts in order to eliminate unreasonable restrictions on the travel agencies' ability to change systems and use more than one system.

We have concluded, however, that entirely banning the use of parity clauses would be unreasonable, since an airline that owns or markets a CRS may limit its participation in other systems in order to compel travel agencies in areas where it is the dominant airline to subscribe to its own system. The apparent use of such tactics by some U.S. airlines caused us to adopt a rule requiring significant owners of a CRS to participate at equivalent levels in competing systems, 14 CFR 255.7 (''the mandatory participation rule''), and some foreign airlines have apparently reduced their participation in a U.S. system in order to frustrate that system's marketing efforts in the foreign carriers' homelands. Our rule will therefore allow systems to enforce parity clauses against airlines that own or market a competing system.

Finally, several parties have proposed other changes in our mandatory participation rule and other CRS rules. We will consider their proposals in our next major CRS rulemaking, not here.

Background

The Systems' Role in Airline Distribution

As we explained in the notice of proposed rulemaking, each CRS is able to dictate its terms for airline participation because virtually all airlines must participate in each system due to the role of travel agencies in airline distribution and the agencies' reliance on CRSs. 61 FR at 42198. Almost all airlines depend heavily on travel agencies for the sale of their services, and travel agencies sell about seventy percent of all airline tickets. Travel agents primarily rely upon CRSs to determine what airline services and fares are available, to book seats, and to issue tickets for their customers. Travel agents use CRSs for these tasks because the systems are the most efficient method of carrying out these tasks. *Ibid.*

Travel agencies typically use only one CRS for obtaining airline information and making bookings. As a result, an airline that wants its services sold by a travel agency must make its services available for sale in the CRS used by that agency. If the airline does not participate in that system, that system's subscribers are likely to make significantly fewer bookings on the airline, which will substantially undermine the airline's ability to compete with other airlines that do participate in the system. Given the importance of marginal revenues in the airline industry, an airline's loss of a few passengers on each flight will substantially reduce, and perhaps eliminate, the airline's ability to operate profitably. 61 FR at 42198.

Because most airlines are therefore compelled to participate in each system, the systems do not compete for airline participation and their prices and terms for participation are not disciplined by market forces. 61 FR at 42198. In contrast, the systems do compete for travel agency subscribers, and travel agencies do not pay supracompetitive prices for CRS services (indeed many agencies receive CRS services and equipment for free). Saber Reply at 1, n. 1; Justice Dept. Comments at 5.

Some airlines, particularly Southwest, compete successfully without participating in all of the systems. Southwest, for example, participates only in Saber. As explained below, most airlines could not duplicate Southwest's ability to avoid full CARS participation, so Southwest's experience does not invalidate our finding that each system has market power over almost all airlines. *See* 61 FR at 42198. We note, moreover, that some airlines like Western Pacific and ValuJet have recently decided to participate in CRSs.

The Systems' Different Participation Levels and the Parity Clauses

Each system offers several levels of participation in its system and various enhancements to the different levels of participation. When an airline uses a higher level of service, it must pay higher fees. When an airline participates at the ''full availability'' level in a system, the travel agents subscribing to that system can obtain a display of the airline's schedules and fares, learn whether seats are available, book a seat, and issue a ticket. However, if the airline participates at a higher level, the travel agent can obtain realtime availability information and make a booking in the airline's internal reservations system. If the airline chooses to purchase the enhancements offered by a system, travel agents can also issue boarding passes and select specific seats on the basis of seat maps. Southwest, on the other hand, uses a level of service offered by Saber called Basic Booking Request. Saber does not display Southwest's availability, so the travel agent must send Southwest an electronic message to find out whether seats are available. 61 FR at 42199.

While almost all airlines must participate in each system at the full availability level, participation at the higher levels does not appear to be essential for many airlines. Moreover, higher-level participation increases an airline's CARS fees. Many airlines accordingly choose not to participate at higher levels, and, but for the parity clauses, many would consider participating at a higher level in some systems but not in other systems. The parity clauses, however, deny airlines the ability to participate at different levels in different systems. Three CRSs—Saber, Worldspan, and System One—impose parity clauses on their airline participants, while the fourth system—Galileo—does not. 61 FR at 42199.

The History of CARS Regulation

Each of the four systems is owned by or affiliated with one or more airlines. American Airlines' parent corporation, AMR, controls Saber, the largest system. United Air Lines, US Airways, several European airlines, and Air Canada own most of Galileo, the second-largest system, which is sold under the name Apollo in North America. Galileo and Saber also have public shareholders. Delta Air Lines, Northwest Airlines, Trans World Airlines, and Abacus, a partnership of several Asian airlines, own Worldspan. System One is owned by Amadeus, which is owned by Lufthansa, Air France, Iberia, and Continental Air Lines. 61 FR at 42198.

Each of the airlines that owns a system has the incentive to use its control of a system to prejudice the competitive position of other airlines. We therefore regulate CARS operations in order to protect competition in the airline industry and help ensure that consumers obtain accurate and complete information on airline services. 61 FR at 42198. Our current rules, adopted in 1992, modified the rules originally adopted by the Civil Aeronautics Board (''the Board''), the agency that had been responsible for the economic regulation of airlines. 49 FR 32540, August 15, 1984, *afield, United Air Lines,* 766 F.2d 1107 (7th Cir. 1985). Both we and the Board adopted the CARS rules under our authority to prevent unfair methods of competition and unfair and deceptive practices in the marketing of airline transportation. 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act, codified then as 49 U.S.C. 1381. 57 FR at 43789–43791. Since our rules by their terms will expire at the end of 1997, 14 CAR

255.12, we will begin a major reexamination of the rules in 1997.

Two features of our 1992 rulemaking are relevant here. First, we revised the rules to give airlines and travel agencies a greater ability to use alternative electronic methods for communicating information and conducting transactions. In particular, we stated that a system could not bar a travel agency from using CARS terminals to access other systems and databases with airline information, unless the system owned the terminals. We intended this rule to make possible direct links between the airlines' internal reservations systems and individual travel agencies. 57 FR at 43796–43800. We had hoped that this rule would avoid the need for more intrusive regulation. 57 FR at 43781. In addition, we prohibited several types of restrictive contract clauses imposed by systems on subscribers—minimum use clauses, roll-over clauses, and parity clauses—that unreasonably limited the travel agencies' ability to switch systems or use multiple systems. 57 FR at 43822–43826.

Secondly, we found that some U.S. airlines with an ownership interest in a CARS appeared to be limiting their participation in competing systems to prejudice competition in the CARS business. If an owner airline limited its participation in competing systems, travel agencies in areas where that airline was the major airline would be compelled to subscribe to its system in order to obtain the best information and transactional capabilities on the airline. 56 FR at 12608; 57 FR at 43800–43801. We therefore adopted the mandatory participation rule, which requires each airline deemed a ''system owner'' to participate in other systems at the same level in which it participates in its own system as long as the terms for such participation are commercially reasonable. 14 CFR 255.7. An airline is a system owner if it and its affiliates hold five percent or more of a system's equity interest. 14 CFR 255.3. Since we focused on the domestic CARS market in adopting the mandatory participation rule, we excluded carriers with a small CARS ownership interest from the rule's coverage, since those airlines appeared unlikely to have an incentive to distort CARS competition within the United States. 57 FR at 43795.

We have also addressed CARS issues in other contexts. First, we found in several proceedings under the International Air Transportation Fair Competitive Practices Act (''IATFCPA''), 49 U.S.C. 41310(c), that a foreign airline was apparently refusing to participate in a U.S. system at an adequate level (or at all) in order to give a marketing advantage to the system owned by that airline or an affiliate in the airline's homeland. *Complaint of American Airlines against British Airways*, Order 88–7–11 (July 8, 1988); *Complaint of United Air Lines* v. *Japan Air Lines*, Order 88–9–33 (September 15, 1988); *Complaint of American Airlines* v. *Iberia, Lineas Aereas de España*, Order 90–6–21 (June 8, 1990). We concluded in those orders that a foreign airline would be engaging in unreasonably discriminatory conduct if it refused to participate in a U.S. system in order to frustrate that system's ability to compete with the foreign airline's own system, since that would interfere with the right of U.S. airlines to a fair and equal opportunity to compete. *See also Complaint of American Airlines* v. *Iberia, Lineas Aereas de España et al.*, Order 93–2–37 (February 17, 1993).

In addition, we have completed two studies of the CARS business and its impact on airlines. *Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer Reservation Systems*, prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry (February 1990) (*Airline Marketing Practices*); and *Study of Airline Computer Reservation Systems* (May 1988). We are currently conducting another study, begun by Order 94–9–35 (September 26, 1994), which will provide information for our review of the CARS rules.

History of This Proceeding

As we explained in detail in the notice of proposed rulemaking, Alaska had been considering lowering its level of participation in Saber while maintaining a higher level of participation in other systems. When Saber learned of this, it told Alaska that any such action would violate the parity clause in Alaska's CARS contract with Saber. Saber also sued Alaska to enforce the parity clause. 61 FR at 42199–42200. After we issued our notice of proposed rulemaking, the court dismissed Saber's suit on the ground that Saber's claims, all based on state contract law, were preempted by federal law, particularly in light of our tentative decision that parity clauses should be prohibited as unfair methods of competition. *American Airlines* v. *Alaska Airlines*, N.D. Tex. Civ. No. 4–94CV–595–Y (September 18, 1996 memorandum opinion).

In addition to defending itself in the litigation, Alaska petitioned us for a rule prohibiting parity clauses. We published a notice inviting comments on Alaska's petition. 59 FR 63736, December 9, 1994. American, Worldspan, and System One filed comments opposing Alaska's petition, as did the two major travel agency trade associations, the American Society of Travel Agents (ASTA) and the Association of Retail Travel Agents (ARTA), and three travel agencies. Galileo International Partnership submitted comments supporting Alaska's petition.

While Alaska's rulemaking petition was pending, Saber told Alaska, Midwest Express, and a number of other airlines that they were participating in another system at a higher level than they were in Saber, that each of them was therefore violating the parity clause in its Saber contract, and that their continued participation in Saber required each of them to either upgrade its participation in Saber or downgrade its participation in the other systems. December 8, 1995, Letter of Scott Alvis, included as Attachment D to Alaska's Reply. At our request, Saber agreed to postpone enforcing this demand against Alaska and Midwest Express for a short time to give us an opportunity to rule on Alaska's petition. See 61 FR at 42201. We have not asked System One or Worldspan to suspend enforcement of their clauses, which to our knowledge have not recently generated as much controversy as Sabre's clause.

We then issued a notice proposing to adopt the rule sought by Alaska. 61 FR 42197, August 14, 1996. The basis for our proposal was our tentative finding that parity clauses unreasonably interfered with each airline's ability to choose the level of CRS services that it would buy and injured competition in both the CRS and airline industries. We recognized, however, that parity clauses could be a legitimate tool against discriminatory conduct by airlines that own or market a competing system. We therefore specifically requested comment on whether we should include an exception in the prohibition so that a system could enforce a parity clause against an airline that owned or marketed a competing CRS. 61 FR at 42197, 42198, 42206.

In proposing the ban on parity clauses, we summarized our reasoning as follows, 61 FR at 42198:

> [T]he vendor contract clauses at issue appear to us to be fundamentally inconsistent with our goals of eliminating unreasonably restrictive practices in the CRS business that limit competition. By denying each non-vendor airline an opportunity to change its level of participation in a system in response to the quality and price of the services offered by each vendor and the airline's own marketing and operating needs, the contract clauses unreasonably restrict competition in the CRS and airline businesses.

Thus, despite our reluctance to regulate CRS contracts, we proposed to ban parity clauses because they ''substantially—and unfairly—restrict a non-vendor airline's ability to choose the level at which it is willing to participate in a system.'' 61 FR at 42201.

We further noted that the parity clauses injured CRS competition: ''[A] system offering more attractive prices and services may obtain less business than it otherwise would, because some airlines will be unwilling to purchase a higher level of that system's services when doing so will force them to increase their purchases from other systems, even if the latter offer lower quality services or charge higher fees.'' 61 FR at 42202. Galileo in fact had alleged that four airlines had already lowered their participation level in Galileo due to Sabre's threat to enforce the parity clause and that Galileo expected more airlines would take such action. 61 FR at 42201.

Furthermore, the parity clauses could drive up a non-vendor airline's costs by forcing it to buy more services from some systems than it would otherwise purchase, without the offsetting benefit of precluding a CARS vendor from compromising CARS competition. Alaska and Midwest Express, for example, stated that Saber's demands that they upgrade their level of participation would increase their CARS costs by more than ten percent. 61 FR at 42201.

We tentatively determined that we could adopt the proposed rule under our power to prohibit unfair methods of competition in the airline industry, a power which authorizes us to prohibit conduct which violates the letter or the spirit of the antitrust laws. 61 FR at 42202. We based that determination on our finding that each CARS has market power over the airlines. Each system had market power because the economics of the airline and travel agency businesses forced airlines (with few exceptions) to participate in each system, no matter how onerous the terms of participation. Because the systems have market power, the parity clauses appeared to be analogous to conduct prohibited by the antitrust laws, such as tying arrangements. 61 FR at 42203.

While we concluded that parity clauses appeared to unreasonably restrict competition as to airlines that did not own or market a CARS, we recognized that an airline that owned or marketed a CARS could choose to lower its participation in competing systems in order to give its own system a competitive advantage. In the past several foreign airlines had lowered their participation in Saber or another U.S. system in order to cause travel agencies in the foreign airline's homeland to subscribe to its system. Saber represented that it had recently used the parity clause against some Latin American carriers in order to ensure that they participated in Saber at the same level that they participated in the CARS they were marketing. 61 FR at 42206. We therefore asked for comments on whether we should modify the proposed rule to prevent unfair competition by barring airline parity clauses except when enforced against a carrier owning or marketing another system. 61 FR at 42197, 42198, 42206.

The Comments and Reply Comments

The Department of Justice; Galileo; several smaller airlines—Alaska, America West, Midwest Express, and Reno; an association consisting of smaller airlines, the National Air Carrier Association; the American Automobile Association; and the European Civil Aviation Conference filed comments supporting the proposed rule. Saber, American, Worldspan, Delta, Northwest, TWA, Continental and System One, the American Society of Travel Agents (ASTA), the Association of Retail Travel Agents, and the United States Travel Agent Registry opposed the proposal. In addition, several hundred travel agencies filed letters opposing the prohibition against parity clauses (most of these letters, however, followed form letters prepared by Saber).

We will discuss the arguments made by the commenters in the following explanation of our decision to adopt a rule generally prohibiting parity clauses but allowing their enforcement against airlines that own or market a competing CARS.

Introduction to Our Decision

We have determined to adopt the proposed rule barring parity clauses, subject to an exception allowing a system to enforce such a clause against an airline that owns or markets a competing CARS. We agree with the Justice Department's findings that the clauses injure airline competition by making airline distribution less efficient and by eliminating the possibility of competition among the CRSs for higher-level participation by airline participants. We further find that, subject to the exception for airlines owning or marketing a competing system, prohibiting parity clauses will promote rather than injure CARS competition and will not significantly injure travel agencies. We are relying on the facts, undisputed by any party in this proceeding, that parity clauses force airlines to buy CARS services that they do not want, that airline participants in CRSs are compelled to accept parity clauses, and that airlines receive no benefit in return for the burdens imposed on them by the clauses.

The parties opposing our proposal base their position in large part on the claim that an airline choosing to buy more service from one system than from another is improperly ''discriminating'' against the latter system. This claim has no merit as to airlines that neither own nor market the favored system. If an airline without such CARS ties chooses to favor one system over another, the airline is only ''exercis[ing] the normal freedom of a purchaser in a competitive market to choose its suppliers and the quantity of goods or services that it will buy from each,'' as we stated in our notice of proposed rulemaking. 61 FR at 42204. In that case the airline has decided that the higher level of service offered by the favored system is more desirable in terms of price, quality, or value than the comparable services offered by other systems. If another system wants that airline to upgrade its participation level, it should do what firms in competitive industries do to win customers—lower its price or otherwise make its service more attractive.

Moreover, while Saber has legitimately complained about foreign airlines that discriminated against it in order to promote the system they own, Saber's position in this rulemaking—that any airline's participation in one system at a higher level than in other systems is unreasonable discrimination—is inconsistent with Saber's own conduct. Saber has established a marketing arrangement with Southwest Airlines, a major U.S. airline that has long refused to participate in any other system. Since Southwest does not participate at all in other systems, those systems' parity clauses cannot affect Southwest. Southwest's participation in Saber (and the airline's refusal to participate in any other system) surely handicaps the other systems' ability to market themselves in areas where Southwest is a major airline. Yet in response to the other systems' argument that we should expand the mandatory participation rule to cover airlines that market a CARS, not just airlines deemed ''system owners,'' Saber says, ''[If a carrier elects not to participate in a system at all, it should be allowed to act as it deems appropriate, including marketing another system.'' Saber Reply at 25.

In this proceeding we are not taking any steps to expand the coverage of the mandatory participation rule, as

explained below, or finding Southwest's conduct improper. Southwest, after all, refused to participate in the other systems long before it agreed to market Saber. However, in our view Saber has not reconciled its position that any airline's decision to participate at a lower level in one system rather than another is discrimination with its position that it is entirely proper for an airline marketing one system to refuse to participate at all in other systems.

Saber wrongly complains that the proposed rule amounts to ''micro management'' of the CARS business and is inconsistent with the Administration's goal of eliminating unnecessary regulation. Saber Comments at 2. Our rule is necessary—market forces do not significantly discipline the systems' treatment of participating airlines, and the systems have used their market power to impose contract terms that reduce competition in the CARS and airline industries and make airline distribution less efficient. This rule is consistent with other actions we have taken to restrict the business choices of CASS and their airline owners when doing so is necessary to keep them from using a dominant market position to frustrate competition. See, *e.g., Complaint of American Airlines* v. *Iberia, Lines Aereas de España,* Order 90–6–21 (June 8, 1990) at 9–10; *Complaint of United Air Lines* v. *Japan Air Lines,* Order 88–9–33 (September 15, 1988) at 11–12.

Before setting forth the basis for our rule in detail, we will explain why we are acting now rather than delaying our decision until the completion of other pending CRS matters.

The Need to Resolve the Parity Clause Issue

Given the harm caused by parity clauses, and the lack of any justification for their continuation as to airlines without CRS ties, our decision to adopt a final rule prohibiting the clauses now is clearly reasonable. Nonetheless, several of the opponents argue that we should delay a decision on the parity clause issue, either because the issue allegedly cannot be rationally resolved until the completion of our pending CRS study and our planned consideration of all CRS regulatory issues in our reexamination of the CRS rules, or because the rule proposed by us would have no significant practical consequences. We cannot agree that any delay is warranted.

First, all of the parties have had an ample opportunity to address the issues in this proceeding, both by filing comments on Alaska's petition and by filing comments and reply comments on our notice of proposed rulemaking. The record in this proceeding, coupled with our earlier analyses of CRS issues (which parties were free to dispute in their comments here), provides more than an adequate basis for resolving the issues in this rulemaking. Thus there is no need for us to delay our decision here until the completion of our pending CRS study.

Worldspan and others argue that the requests by several commenters for changes in other rules, primarily the mandatory participation rule, necessarily mean that this rulemaking should be postponed until we can consider all of the commenters' requests for rule changes. *See, e.g.,* Worldspan Reply at 2–3. Despite these arguments, we conclude that we can rationally and fairly decide the parity clause issue without deciding other issues or changing other CRS rules.

Several parties have urged us to reexamine the mandatory participation rule applicable to airlines with a significant CRS ownership interest, either by limiting the rule or by broadening its scope, and we recognize that the mandatory participation rule involves competitive and economic efficiency issues like those presented by the parity clause issue. Even so, the relationship between the two rules is not close enough to require them to be decided together. No one, for example, has claimed that our adoption of the proposed rule on parity clauses will make compliance with the mandatory participation rule more burdensome for the airlines subject to that rule.

We disagree with ASTA's position that it would be unfair to travel agencies for us to act on Alaska's petition without addressing the travel agencies' contention that their CRS contracts will not allow them to switch to a different system if the quality of a system's service declines during the contract term because some airlines reduce their participation levels in that system as a result of our rule. Assertedly the travel agencies entered into contracts with systems in the expectation that no airline participant could lower its level of participation in one system while maintaining a higher level in other systems. ASTA Comments at 2–3. However, travel agencies have never had any implied guarantee that a system will not become less useful during the term of the subscriber contract. For example, Galileo, Worldspan, and System One changed their rules on non-participant airlines with the result that their subscribers could no longer ticket Southwest through the CRS. That change immediately made those systems less attractive for agencies in areas where Southwest was an important airline. Similarly, after a travel agency chooses a system because its owner is the major airline in the agency's area, that airline may decide to drastically reduce its operations in the area. See, *e.g., Marketing Practices Report* at 24, n. 50. Moreover, travel agencies have more bargaining leverage with the systems than the airlines do. That travel agencies benefit from the systems' competition for their subscriptions is shown by the systems' reliance on the suppliers of travel services for almost all of their revenues; subscribers, in contrast, contribute only about ten percent of CRS revenues. Justice Dept. Comments at 2, 5.

Deferring this proceeding until the completion of the major rulemaking could also lead to a significant delay in remedying the competitive harm addressed by this rule. While the reexamination of all of the CRS rules is scheduled to be completed by the end of 1997, that will probably not happen. Our last major reexamination of the CRS rules took much longer than expected. We did not publish our revised rules until September 1992, almost two years after the original deadline of December 1990.

Furthermore, delaying the completion of this rulemaking would postpone the beginning of potential competition among the systems for airline purchasers of higher levels of CRS service. Equally importantly, it could create substantial risks for Alaska and Midwest Express, since Sabre has told them that it considered them in violation of the parity clause and that they would be excluded from Sabre if they did not upgrade their level of participation in Sabre (or reduce their level of participation in other systems). Sabre agreed not to enforce the parity clause against them only for a short period, not indefinitely. 61 FR at 42201; Alaska Reply at 5.

Sabre has argued that the parity clause issue is too insignificant to warrant prompt action. Sabre bases this argument in part on its contention that its clause only applies when the fees and quality of service offered by Sabre are comparable to those offered by the system in which the airline is participating at a higher level. Sabre Comments at 3–4. Sabre's contention, however, does not accurately characterize the contract clause, as explained below. But even if the characterization were accurate, the clause should still be prohibited due to the competitive harm it causes.

Sabre asserts that the parity clauses cannot have any significant impact, since the airlines operating the great

majority of domestic service are subject to the mandatory participation clause and since the amount of revenue obtained by Sabre as a result of the parity clause is so small that a prohibition of parity clauses would have no significant impact on U.S. airlines. Sabre Reply at 2–3. We disagree. Even though this rulemaking will not change the applicability of our mandatory participation rule to airlines with CRS ownership interests, Alaska and Midwest Express have estimated that Sabre's most recent threat to enforce the clause against them would have increased their CRS expenses by more than ten percent. 61 FR at 42201. Galileo has stated that at least four airlines reduced their participation levels in Galileo as a result of Saber's recent threats to enforce the parity clause and that other airlines are likely to do so if we do not issue a final rule in this proceeding. Galileo Comments at 2–3. And, as shown by the Justice Department's comments, the systems' recent enforcement of the parity clauses has thwarted efforts by Reno Air and at least one other airline to improve the efficiency of the distribution of their services. Justice Dept. Comments at 6–7, 8–9. While the increased CRS expenses imposed on an airline by the parity clause may be small, even small expenses are important because of the thin margins in the airline business. 57 FR at 43783. In addition, airlines like Alaska must lower their expenses since they increasingly face competition from Southwest and other low-fare carriers that have lower distribution costs. See 61 FR at 42199; United Comments at 6–7.

The Systems' Market Power

Airlines must accept parity clauses as part of the price for obtaining any services from three of the systems. The systems can compel airlines to accept the clauses because each system has market power over airline participants, as we have found in our past rulemakings and CRS studies. 56 FR at 12591–12600; 57 FR at 43783–43784; *Airline Marketing Practices* at 44, 76–77, 83–84, and 91–93. The Justice Department thus states, Justice Dept. Comments at 2–3 (footnote omitted):

> Each CRS provides access to a large, discrete group of travel agents, and unless a carrier is willing to forego access to those travel agents, it must participate in every CRS. Thus, from an airline's perspective, each CRS constitutes a separate market and each system possesses market power over any carrier that wants travel agents subscribing to that CRS to sell its airline tickets.

See also Midwest Express Comments at 4; Alaska Reply at 16.

Our conclusion that each system has market power is consistent with the Supreme Court's analysis in *Eastman Kodak Co.* v. *Image Technical Services*, 504 U.S. 451 (1992). There the Court explained that market power is the power ''to force a purchaser to do something that he would not do in a competitive market,'' 504 U.S. at 464, quoting *Jefferson Parish Hospital* v. *Hyde*, 466 U.S. 2, 14 (1984), and ''the ability of a single seller to raise price and restrict output.'' 504 U.S. at 464, quoting *Fortner Enterprises, Inc.* v. *United States Steel Corp.*, 394 U.S. 495, 503 (1969).

The Court's definition of market power fits the systems' imposition of parity clauses, since there is no evidence that an airline would accept an obligation like the parity clause in a competitive market. We noted in the notice of proposed rulemaking that no one had given us an example of any comparable practice by a seller in a competitive industry (while Sabre cites the most favored nations clauses imposed by buyers in some markets, those clauses are different from the parity clauses imposed on buyers by the systems, as discussed below). 61 FR at 42202.

In addition, the clauses demonstrate the systems' ability to raise prices or restrict output by forcing airlines to choose between paying higher CRS fees for unwanted services or reducing their purchase of services from a competing system.

In *Eastman Kodak* the Court also noted that market power is usually inferred from the seller's possession of ''a predominant share of the market.'' 504 U.S. at 464. Insofar as electronic access to travel agency subscribers is concerned, each system effectively holds a monopoly market share. Justice Dept. Comments at 2–3. See also 57 FR at 43783–43784, quoting the Department of Justice's analysis in the last comprehensive CRS rulemaking.

Sabre nonetheless contends that no system has market power. Sabre, however, does not argue that any airline has an alternative means for electronically giving travel agencies the ability to obtain information on its services and conduct booking and ticketing transactions. Sabre similarly offers no analysis showing that market forces limit in any way a system's ability to raise the fees charged participating airlines. While Sabre submitted an affidavit from Dr. Gary Dorman, an economist, in an attempt to refute our findings of market power, his affidavit is unpersuasive. He claims that the relationships between airlines and CRSs ''closely resemble those found between suppliers and distributors throughout the economy.'' Dorman Affidavit at 1. He provides no support for this assertion. He suggests that the Justice Department's rationale—that each system has a monopoly over electronic access to its subscribers—would be irrational if applied to grocery stores. *Id.* at 2–3. We agree—the grocery store business is quite competitive. The Justice Department, however, based its rationale on its analysis of the airline and CRS businesses, and Dr. Dorman submitted no analysis of his own. While he asserts that the Justice Department has failed to show that the CRS fees charged participating airlines are at supracompetitive levels, *id.* at 3, he has presented no analysis indicating that Sabre's booking fees do not exceed the system's costs. The Justice Department's conclusion, on the other hand, is consistent with our past findings on the systems' ability to charge airlines fees that are unrelated to their costs. 57 FR at 43785.

While Sabre additionally argues that the systems cannot have market power since Southwest has prospered while participating only in Sabre, Sabre Comments at 23, we think Southwest's experience does not disprove the systems' possession of market power over airline participants. Southwest itself has chosen to participate in Sabre, the system with the largest market share in the United States. More importantly, Southwest's operations are substantially different from those of other airlines. Southwest operates as a low-fare carrier relying heavily on direct sales to consumers, not on travel agency sales. For these and other reasons, few other airlines can copy Southwest's experience and thereby avoid depending on CRSs for the distribution of their services. Alaska Reply at 16; Midwest Express Comments at 7. As the Justice Department points out, while some new entrant airlines have tried to bypass CRSs by creating alternative methods for bookings, ''the vast majority of tickets are still booked through travel agents using a traditional CRS, and airlines that desire access to consumers who purchase through such channels must participate in each CRS.'' Justice Dept. Comments at 3, n. 2.

While Sabre claims that airlines can avoid depending on CRSs due to the growth in use of the Internet for airline bookings, Sabre Comments at 23, the Internet cannot enable airlines to avoid CRS participation, at least not in the near future. ASTA Comments at 3–4. The great majority of airline tickets are

still sold by travel agents, not through direct purchases by consumers.

Thus, despite the existence of some alternative means of distribution, most airlines depend on travel agencies for distribution, so the systems have market power over those airlines. The systems have used that power to impose parity clauses on airline participants which reduce competition in the airline and CRS businesses and make airline operations more inefficient, as explained next.

The Inefficiency and Reduced Competition Caused by the Parity Clauses

Because of the parity clauses, the systems need not compete on price and service quality to obtain higher-level participation by airlines. Such competition might well exist otherwise (although somewhat limited for airlines subject to our mandatory participation rule). While virtually all airlines must participate in each system at the full availability level, the competitive demands of the airline business do not compel them to participate in the highest levels of CRS service. Alaska and Midwest Express, for example, have chosen not to purchase some of the enhancements offered by Sabre, a decision that led to Sabre's threats to exclude them entirely from the system. Alaska Reply at 5.

In a competitive market, each system would compete to obtain higher levels of participation by airlines, in order to make the system more attractive to the travel agencies doing business in regions where those airlines have a significant market share. See, *e.g.*, Justice Dept. Comments at 2. Systems would also compete for higher levels of participation in order to increase revenues, since airlines pay higher fees for higher levels of participation.

The parity clause, however, reduces or eliminates the systems' competition for higher level participation by airlines, as the Justice Department has explained, Justice Dept. Comments at 5:

> Without the parity provision, each CRS would likely have to respond competitively to a large booking fee decrease offered by one of its competitors to airlines. With the parity provision, however, each CRS knows that a participating carrier cannot be induced by price to upgrade its service level in a competing CRS without also upgrading in its own. Thus, there is little reason for any CRS to lower booking fees to induce participating carriers to upgrade their service levels. [footnote omitted]

In addition, the Justice Department states that the parity clauses have kept the systems from working with airlines to create levels of service that will meet their needs. The Justice Department cites Reno Air's experience as an example. When Reno Air, which participates in all four systems, wanted a system to develop a level of service that would meet its distribution needs, none of the systems would work with it. In contrast, when Southwest wanted Sabre to develop a participation level that suited Southwest's needs, Sabre was willing to create such a product. Southwest, unlike Reno, is not bound by the parity clauses since it participates in only one system, Sabre. Justice Dept. Comments at 6–7.

Furthermore, as shown by the Justice Department, the parity clauses reduce the systems' incentive to provide satisfactory service to participating airlines. Because each airline must participate in each CRS, the airline's only credible response to poor service would be a threat to lower its participation level. The parity clause, however, prevents an airline from taking such action, unless it simultaneously lowers its participation level in the other systems. Justice Dept. Comments at 7–8.

Finally, of course, parity clauses create inefficiency by compelling non-vendor airlines, which have no incentive to skew CRS competition, to buy a higher level of service from the systems than they would otherwise choose. Without the clauses an airline might well decide that participation at a higher level in some systems but not others would be the most efficient method for distributing its services. Justice Dept. Comments at 8–9; Midwest Express Comments at 3–5; Alaska Reply at 19–20; America West Reply at 2–4.

The parties opposing our proposal argue that the parity clauses do not injure airlines and, even if airlines were injured, the clauses provide competitive benefits that outweigh any possible injury. We find these arguments unpersuasive.

According to Sabre, parity clauses do not give it the power to increase airline fees due to the impact of our rules. One rule, 14 CFR 255.6(a), requires fees to be nondiscriminatory, while the mandatory participation rule requires system owners to participate in competing systems only if the terms for participation are commercially reasonable. Sabre contends that these two rules in combination ''severely'' restrict a system's ability to raise prices. Sabre Comments at 16–18. Sabre's contention is contradicted by the systems' ability to impose fees on airlines for CRS services that are unrelated to the costs of providing CRS services. 57 FR at 43785. We doubt that the systems' fees would be so high if our rules had the effect suggested by Sabre. Moreover, airlines have increasingly complained about the continuing series of fee increases imposed by the systems in recent years. See, *e.g.*, Justice Dept. Comments at 5.

Sabre further contends that a rule allowing airlines to ''discriminate'' against one or more systems will lead to higher levels of concentration in the U.S. CRS market. Assertedly the United States CRS market is one of the most competitive in the world ''largely because airline discrimination against CRSs is rare,'' whereas in foreign markets discrimination is much more likely. Sabre Reply at 17. We think that the U.S. market is more competitive than foreign markets primarily because the United States had five large airlines (American, United, TWA, Eastern, and Delta) that each had the resources to create a CRS when the CRS business was developing. However, even if Sabre's analysis were correct, our mandatory participation rule already prevents any of the largest airlines in the United States from selectively lowering its participation in competing systems because each of those airlines holds a significant CRS ownership interest and is covered by that rule.

Sabre argues that parity clauses are essential for ensuring competition in the CRS market, since otherwise carriers could discriminate against one or more systems, as shown by past experience. Sabre Comments at 9–10, 19–20. As discussed below at greater length, however, the anticompetitive discrimination that has occurred has involved decisions to reduce or end participation in competing systems by an airline that either itself or through an affiliate owned or marketed a system. Those kind of abuses should be prevented by our mandatory participation rule and the exception included in this rule that allows a system to enforce a parity clause against an airline that directly or indirectly owns or markets a competing system.

Sabre also repeats the argument made by others earlier in this proceeding that eliminating the parity clauses will make it more difficult for the smaller CRSs to survive. Sabre Comments at 14. We concluded that this claim was unpersuasive—a smaller system can obtain higher-level participation by airlines if it offers attractive prices and service. 61 FR at 42205. Moreover, System One, previously the smallest U.S. system, is now part of Amadeus, one of the largest systems in the world. In addition, as we explained earlier, the smaller systems' past conduct indicates that they do not view the ability to offer competitive functionality on all

significant airlines as crucial to their ability to survive in the U.S. market, since they changed their policies on the treatment of non-participating airlines and thereby ended their subscribers' ability to issue tickets on Southwest through the CRS. 61 FR at 42205. Although Southwest had never been willing to pay for CRS services in those systems—Worldspan and System One—or in Galileo, each of those systems nonetheless had displayed some information on Southwest's flights and allowed travel agents to write Southwest tickets using the system until 1994. Because of Southwest's continuing refusal to pay for CRS services, each of those systems then decided to change its policies on the treatment of non-participating airlines and thus to remove Southwest flight information from its displays and to bar the system's use for writing Southwest tickets. These steps greatly reduced the efficiency of travel agencies subscribing to one of those systems when they were located in regions where Southwest is an important airline. 61 FR at 42198. We recognize the claims that each system's action was a rational response to Southwest's continuing refusal to pay CRS fees, Worldspan Comments at 9–10, but their action still undermines Sabre's argument that a system must provide functionality on all important airlines that is comparable to the functionality available from competing systems.

Sabre additionally disputes our competitive analysis by arguing that the elimination of parity clauses could cause the systems to limit the number of different levels of service offered participating airlines because the systems ''might find it necessary'' to phase out the lower levels of service or to reduce the price differentials between the various levels of service in order to limit the airline participants' ability to discriminate against the system. Sabre Comments at 16–17; Sabre Reply, Dorman Affidavit at 4. Sabre does not explain why the systems would reduce the number of options available to airline participants when airlines have a greater ability to choose the level of service they wish to purchase. Sabre also does not explain why eliminating the lower levels of service would solve its alleged discrimination problems. If Sabre eliminates the less costly levels of service, it might also discourage smaller airlines from participating at all in Sabre. If Sabre's arguments were accurate, that could hamper the system's ability to obtain subscribers. But if Sabre in fact reacted to our decision by reducing the levels of service available to participating airlines, that would seem to confirm that it believes that it has the power to control the distribution choices of the airlines that used the eliminated service levels.

The Broad Applicability of the Parity Clauses

In concluding that the parity clauses unreasonably deny airlines the ability to choose how much CRS service they wish to purchase, we read the clauses as requiring an airline to upgrade its participation in a system if it is already participating at a higher level in another system, even if the system requiring the upgraded participation offers inferior service or charges higher prices than the system whose higher-level service is already being used by the airline. 61 FR at 42201–44202.

Sabre and Worldspan now contend that we mischaracterized their parity clauses. Sabre claims that its parity clause requires upgraded participation only when Sabre offers the higher-level service at a price and on terms comparable to those offered by the system in which the airline is already participating at the higher level. Sabre Comment at 18. Worldspan similarly contends that it enforces its parity clause only when Worldspan's service is comparable in price and quality to the higher-level service purchased by the airline participant from a competing system. Worldspan Reply at 5–7. The record does not support these claims.

Sabre's clause states, ''[A]ny improvements, enhancements, or additional functions to Participating Carrier's reservations services offered to end users of any [CRS] will be offered by Participating Carrier to SABRE Subscribers on the same terms and conditions as are agreed to with such [CRS].'' Alaska Reply at 22. Alaska contends that the clause appears to impose an obligation on the participating airline, not on Sabre, to use the same terms and conditions; the clause does not imply that the airline is excused from the higher level of Sabre participation if Sabre's terms and conditions are different. In addition, Alaska points out that Sabre's current interpretation is very new: Sabre did not interpret the clause as requiring a higher level of participation only when Sabre offered comparable price and terms until after we issued our notice of proposed rulemaking. Neither Sabre's comments on Alaska's rulemaking petition nor its pleadings in its suit against Alaska stated that Sabre's price and terms for higher-level participation had to be comparable to those offered by the system in which the airline was already participating at a higher level. Alaska Reply at 22–23. See also Galileo Reply at 4–5.

We also note that Sabre's reading of its clause would make the clause difficult to implement, since different systems use different pricing methods and do not offer the same levels of service.

Sabre, for example, makes much less use of transaction pricing than the other systems. As Alaska notes, Sabre has had to read the word ''same'' in its contract clause as ''comparable'' in order to make its interpretation plausible, but the resulting interpretation is inconsistent with the contract's literal language. Alaska Reply at 22, n. 7.

Worldspan, unlike Sabre, does not contend that the language of its clause requires an airline to increase its participation in Worldspan only when Worldspan's prices and services are comparable to the higher-level service already being purchased by the airline from another system. Worldspan instead claims only that it does not enforce its clause against airlines unless Worldspan's price and quality are comparable. However, Worldspan's parity clause in no way limits Worldspan's ability to enforce the clause, whether or not its price and quality are comparable. Worldspan's clause, included as an attachment to Alaska's rulemaking petition, reads as follows, ''Participating Carrier will provide Worldspan users with any improvements, enhancements, or functions related to Participating Carrier's reservations services as offered to users of any other CRS.'' The clause would not block Worldspan from changing its enforcement policy in the future.

As a result, we conclude that our notice of proposed rulemaking correctly interpreted the scope of the parity clauses. Moreover, even if the interpretation now offered by Sabre and Worldspan were correct, airline participants would have little protection, since Sabre or Worldspan would decide whether the price and quality of the competing system's service were comparable to the service offered by itself. Midwest Express Reply at 5.

More importantly, even if the parity clauses were limited as claimed by Sabre and Worldspan, allowing systems to enforce them against airlines with no CRS ownership or marketing interest would still be contrary to the public interest. Parity clauses eliminate price and service competition among the systems for higher levels of CRS service and make airline distribution less efficient. If the clauses were limited as proposed by Sabre and Worldspan, the

systems would still have no need to improve their prices and services relative to their competitors. For example, parity clauses of the type proposed by Sabre and Worldspan would still eliminate any need by a system to respond to Reno Air's request for a new level of service that would match Reno's distribution needs. And airlines would still be forced to either buy more CRS services than they wanted or reduce their purchase of services from some systems in order to avoid violation of the parity clauses imposed by other systems. Midwest Express Reply at 4–5.

For these reasons, we also find unacceptable Sabre's proposal that we modify our rule to allow a system to enforce a parity clause against an airline as long as the system's price and other terms for participation are comparable to those offered by the system in which the airline already participates at a higher level.

The Systems' Claims of Discrimination by Airline Participants

In arguing that parity clauses are essential for fair CRS competition, Sabre characterizes an airline's decision to participate at a higher level in one system than in another as ''discrimination.'' We cannot agree with Sabre's view with respect to airlines that do not own or market a system. An airline is not engaging in ''discrimination'' when it decides to participate at a higher level in one system than in other systems. 61 FR at 42204. When a firm in a competitive industry chooses to buy more service from one supplier than another, no one characterizes that choice as ''discrimination.''

In arguing the contrary with respect to airline choices on their levels of CRS participation, Sabre complains that an airline's decision to participate at a lower level in one system than in other systems will handicap the former system's ability to compete in regions where the airline is a major carrier. For example, Sabre alleges that it might be forced to withdraw from the Pacific Northwest and State of Alaska CRS markets if Alaska Airlines downgraded its participation in Sabre. Sabre contends that Alaska's choice of a lower participation level would make using Sabre less efficient for travel agencies in those regions, where Alaska is a principal airline, and thus end Sabre's ability to obtain subscribers in those regions. Sabre Comments at 7–8.

If Sabre's claims were true, however, Southwest's participation in Sabre and refusal to participate at all in other systems should have eliminated those systems from regions like California where Southwest is a major airline. We have no evidence that Sabre has driven Galileo, Worldspan, and System One from those regions. And the continuing policy of those systems not to allow their subscribers to use the CRS to issue tickets on Southwest further suggests that a system's failure to provide as much information and booking capability on a significant airline as do other systems is not a fatal competitive handicap. 61 FR at 42205.

In any event, if Alaska participates in Sabre at at least the full availability level, as is its stated intent, Alaska Comments at 4, Sabre agencies could obtain schedule, fare, and availability information on Alaska's services, make bookings on Alaska, and issue Alaska tickets through Sabre. We doubt that Alaska's choice of a lower participation level in Sabre than in other systems would drastically reduce Sabre's competitiveness in Alaska and the Pacific Northwest.

Even if Sabre were correct in claiming that a regionally-important airline's decision to participate at a lower level in one system than in other systems is a substantial competitive handicap, the proper remedy would not be the system's use of market power to compel the airline to buy a higher level of service than it wanted, when the airline neither owns nor markets a competing system. The system instead should make its price and service more attractive so that the airline will determine that the system's higher level of service is economically worthwhile. Midwest Express Reply at 3.

We note, moreover, that Galileo believes that it can obtain an adequate number of airline users of its higher-level services by offering better service. Galileo, whose contracts contain no parity clause, asserts that airlines are willing to participate in its higher-level features because of their superiority. Galileo Comments at 2.

Sabre suggests that an airline that neither holds a CRS ownership stake nor has a contract compensating it for marketing another system may still choose to lower its participation level in a system in order to distort competition in the CRS business. Sabre Comments at 10–11. Sabre has provided no evidence of such conduct, and we consider such a scenario unlikely. Given the importance of CRS participation to an airline's ability to distribute its services efficiently and the significant differences in fees between different levels of CRS participation, we see no reason why an airline that neither owns nor markets a competing system would base its decision on extraneous factors instead of an assessment of its distribution needs and costs. Even if such an airline might choose a lower level of participation in one system for illegitimate reasons, the slight possibility of such an occurrence cannot justify the systems' elimination of the ability of all other non-owner airlines to choose their level of participation in each system. We will, however, add an exception to the rule so that a system can enforce a parity clause against airlines that own or market another system.

Finally, in an effort to bolster its discrimination claims, Sabre asserts that Alaska's motive for lowering its participation level in Sabre was Alaska's interest in obtaining payments from Galileo under an arrangement between Alaska and Galileo for switching travel agencies from Sabre to Galileo. Sabre Comments at 11. Alaska, Galileo, and Galileo's marketing affiliate, Apollo Travel Services, have each denied that any such arrangement ever existed or was considered.

Alaska Reply at 12–13; Galileo Reply at 4; Apollo Travel Services Reply. Sabre's charge seems implausible—Sabre only made the charge at a late stage in this proceeding, and the affidavits submitted by Sabre largely rely on speculation and hearsay. But if Sabre's charge were true, our rule would allow Sabre to enforce the parity clause against Alaska—or any other participating airline—that had a marketing arrangement with another system.

Impact on Travel Agencies

In proposing the rule prohibiting parity clauses, we tentatively determined that such a rule would not significantly harm travel agencies. We noted that airlines like Alaska rely on travel agencies for their distribution and so would not likely take steps that would deny travel agencies the ability to obtain information and make bookings electronically. 61 FR at 42205–42206. In addition, travel agencies using any system other than Sabre were already handicapped, since they could not use their system to issue tickets on Southwest, a major airline in many domestic markets, since 1994. 61 FR at 42206.

We find unpersuasive the arguments by Sabre, ASTA, and several other parties that the rule will harm U.S. travel agencies, although we recognize that most travel agencies use only one system and thus largely depend on that system to electronically obtain airline information and conduct booking and ticketing transactions.

First, the largest airlines are CRS owners and thus subject to the mandatory participation rule. Secondly, the claims that U.S. travel agencies will be injured essentially assume that one or more important airlines without CRS ownership or marketing ties will reduce their participation in some systems below the full availability level, with the result that travel agents using that system could neither obtain availability information nor make bookings and issue tickets on those airlines through the CRS. No one has shown that airlines are likely to use the rule to do that. Airlines participate in the systems, after all, to make their services readily saleable by the agents using each system, and no airline (other than Southwest and some other low-fare airlines) is likely to reduce its participation level in any system to an extent that would keep the airline from being booked through the system. See, e.g., Alaska Comments at 5–6.

We assume that airlines without CRS ownership or marketing ties would use the rule to avoid buying higher levels of participation from one or more systems—in other words, those airlines will participate at the full availability level but may choose not to participate in direct access or all of the enhancements offered by a system. While an airline's non-participation in these features may cause some inconvenience to the travel agents using that system, the amount of inconvenience should not cause substantial inefficiencies. Furthermore, if the systems could maintain parity clauses, airlines could respond by lowering their participation in systems that they would otherwise participate in at a higher level. Galileo thus states that some airlines have lowered their participation in its system as a result of Sabre's threats to enforce its parity clause. Galileo Comments at 2–3. The Justice Department states that Reno Air reduced its participation level in the systems as a result of the systems' enforcement of the parity clause. Justice Dept. Comments at 7. And the American Automobile Association believes that our rule will lead to a greater degree of airline participation in CRSs, not less participation.

In addition, while each airline must participate in every system, most travel agencies can choose between systems. The systems compete for travel agency subscribers—indeed, according to Sabre, some agencies receive cash bonuses in exchange for agreeing to use a system. Sabre Reply at 1, n. 1. Thus travel agencies should have some ability to influence systems to make higher levels of functionality attractive to non-owner airlines.

Furthermore, our CRS rules include several provisions that give travel agencies the ability to use two or more systems. In 1992, for example, we prohibited parity clauses and minimum use clauses in travel agency contracts, gave travel agencies the right to use their own equipment, stated that equipment owned by a travel agency could be used to access any database, CRS, or internal reservations system of any airline, and required systems to offer travel agencies three-year contracts. 57 FR at 43822–43826. Thus, a travel agency should have some ability to protect itself if one system offers unsatisfactory information and booking capability on an airline important to the agency.

ASTA further contends that our proposed rule is unfair, since travel agencies will have no protection if their chosen system becomes less efficient due to an important airline's reduction in its participation level. As noted, we doubt that airlines will use the rule to drastically downgrade their participation in any system. Travel agencies, moreover, have never had a guarantee that all important airlines not covered by the mandatory participation rule will participate in each system. Indeed, as shown, Southwest has only participated in Sabre, so agencies using one of the other three systems have never been able to obtain availability information on Southwest's flights or to book Southwest through their CRS. Nonetheless, many travel agencies were willing to subscribe to one of those systems.

We have also received a large number of letters from travel agencies opposing our proposal. We recognize, as shown by these letters, that travel agencies would prefer to obtain the best possible information and functionality on all airlines from each of the systems. However, that result would require us to allow the systems to continue using their market power to force some participating airlines to buy a higher level of service than they wish, a result that would be inconsistent with our policy of enabling airlines (and travel agencies) to benefit from CRS competition.

In addition, a large portion of the travel agency letters are form letters solicited by Sabre, according to Alaska's reply comments. Alaska Reply at 8–9. Moreover, the letters using Sabre's suggested form predict that airlines will lower their participation in a system in order to injure travel agencies. Given the airlines' reliance on the agencies for distribution, we do not believe that an airline will be taking steps just to injure travel agencies; an airline will only change its level of participation if it decides that doing so is cost-effective. We also note, as explained by Alaska, that the material used by Sabre to obtain the letters did not accurately describe the CRS business. Alaska Reply at 8–9.

Worldspan contends that the rule would hurt travel agencies by reducing the systems' ability to compete for subscribers in areas where an important airline lowered its participation level in some systems but not others. Worldspan Comments at 7. As discussed, a system can compete for higher-level participation by airlines. And Worldspan's prediction, even if correct, could not justify the continuation of a regime where the systems use their market power to force airlines to buy more services than they want. Furthermore, our ban on airline parity clauses essentially duplicates our ban on parity clauses in subscriber contracts. 57 FR at 43826.

Legal Authority for Adopting the Proposed Rule

The adoption of the rule prohibiting parity clauses is clearly within our statutory authority. As we explained in our notice of proposed rulemaking, 61 FR at 42202–42203, we may investigate and determine whether any air carrier or ticket agent has been or is engaged in unfair methods of competition in the sale of air transportation. 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act (and codified then as 49 U.S.C. 1381). Our authority, modelled on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, allows us to define and prohibit as unfair methods of competition practices that do not violate the antitrust laws. See, *e.g., United Air Lines,* 766 F.2d 1107, 1114 (7th Cir. 1985). We may not prohibit a practice as an unfair method of competition, however, if the practice does not violate the letter or the spirit of the antitrust laws. See, *e.g., E.I. Du Pont de Nemours & Co.* v. *FTC,* 729 F.2d 128 (2d Cir. 1984).

In the notice of proposed rulemaking, we tentatively concluded that the parity clauses were comparable to antitrust violations on several grounds, based on our finding that each of the systems had market power over airline participants. We reasoned that the parity clauses were analogous to impermissible tying arrangements, violations of the essential facility doctrine, and attempts to monopolize the electronic distribution of information on airline services to travel agencies. 61 FR at 42203.

Sabre's parity clause—and the similar clauses used by Worldspan and System

One—violate antitrust principles because they deny an airline the ability to choose for itself the level of service it will buy from each system. As the Supreme Court has stated, ''A restraint that has the effect of reducing the importance of consumer preference in setting price and output is not consistent with [the] fundamental goal of antitrust law'' that price and output should respond to consumer preference. *NCAA* v. *Board of Regents,* 468 U.S. 85, 107 (1984). *NCAA* also undermines Sabre's contention that the parity clause merely allows Sabre to compete on an equal footing with other systems, for the Court rejected a similar defense by the NCAA. The NCAA had argued that its restraints were necessary since its preferred product—tickets for college football games—would not attract enough consumers without limits on televised games. The Court reasoned this justification was inconsistent with the basic policy of the Sherman Act. 468 U.S. at 116–117.

Only Sabre objected to our tentative conclusion that our legal authority enables us to adopt a rule prohibiting parity clauses, and Sabre has not shown that our analysis was invalid.

Significantly, Sabre has not challenged several key points in our reasoning. We stated our doubt that firms in any competitive industry could unilaterally impose a requirement like the parity clauses on their customers. We noted that purchasers typically obtained offsetting benefits, such as a guaranteed supply or a lower price, when they agreed with suppliers in competitive industries to requirements contracts or contracts requiring purchases in large quantities or over long periods of time. *Cf. Barry Wright Corp.* v. *ITT Grinnell Corp.,* 724 F.2d 227, 237 (1st Cir. 1983) (Breyer, J.). As we pointed out, no one in this proceeding had claimed that participating airlines obtained any benefit from the clauses or obtained other benefits in exchange for accepting the clauses. 61 FR at 42202. Neither Sabre nor any other party argues the contrary, nor has Sabre or any other party cited comparable business practices in competitive industries (while Sabre contends that the most favored nation clauses used by some health insurers are comparable, we find that they are not, as explained below).

In arguing that we have no legal authority to prohibit parity clauses, Sabre disputes our finding that each system has market power over airline participants, but, as discussed above, after reviewing the comments, we have determined that the systems do have market power.

Sabre further contends that we may not prohibit parity clauses, because the clauses allegedly have no impact on airline competition and our authority to prohibit unfair methods of competition runs only to practices that reduce airline competition. Sabre is mistaken in arguing that the clauses have no impact on airline competition. The clauses force airlines with no CRS ownership interest to buy a higher level of service than they would buy if they had the freedom to choose what level of service to buy from each system. The clauses thereby increase the costs of the airlines competing with the system owners and injure those airlines' ability to compete effectively. See, e.g., Midwest Express Comments at 6; National Air Carrier Ass'n Comments at 2–3. See also Justice Dept. Comments at 6–7, 8–9.

Sabre in any event errs in contending that our authority is limited to practices that interfere with airline competition. The statute expressly authorizes us to prohibit ''an unfair method of competition in * * * the sale of air transportation.'' 49 U.S.C. 41712. Parity clauses clearly affect ''the sale of air transportation'' and affect competition among the systems in distributing airline information and booking capabilities. The clauses thus are within our authority over unfair methods of competition. By requiring airlines to purchase services they do not want (or to avoid the purchase of services they do want), the clauses drive up airline costs and thus increase airfares.

Judicial Rulings on Most Favored Nation Clauses

Sabre's principal challenge to our legal analysis is its argument that the courts have approved practices that allegedly resemble the parity clauses—most favored nation clauses imposed by buyers—as pro-competitive. Sabre cites such cases as *Ocean State Physicians Health Plan* v. *Blue Cross,* 883 F.2d 1101 (1st Cir. 1989), *cert. denied,* 494 U.S. 1027; and *Blue Cross & Blue Shield* v. *Marshfield Clinic,* 65 F.3d 1406, 1415 (7th Cir. 1995), *cert. denied,* 64 U.S.L.W. 3624 (March 19, 1996). Sabre analogizes the most favored nation clauses imposed by buyers with its clause, which protects a seller against a buyer's decision to buy more service from another supplier. As a result, Sabre argues, we cannot conclude that the clauses are an unfair method of competition.

Sabre made this same argument in its response to Alaska's rulemaking petition, and we found it unpersuasive. As we explained, in the cases cited by Sabre, the courts upheld a buyer's insistence on a most favored nation clause which assured the buyer that its supplier would not give any other customer a lower price. The courts reasoned that a most favored nation clause imposed by a buyer represented the buyer's insistence on obtaining the lowest price and thus was a practice which tended to promote competition on the merits. Such a clause benefited consumers by giving them lower prices. 61 FR at 42204.

We concluded that the most favored nation clause cases did not support Sabre's position. Unlike the most favored nation clauses imposed by buyers, the parity clauses imposed by the CRSs on their airline customers do not promote efficiency, do not lead to lower prices for airline participants, and cause consumers to pay higher prices, as we explained in our notice of proposed rulemaking. 61 FR at 42204. And we pointed out that the Justice Department believed that most favored nation clauses imposed by buyers could violate the antitrust laws. *Ibid.,* citing the proposed consent decrees in *United States* v. *Vision Service Plan* and *United States* v. *Delta Dental Plan of Arizona,* published respectively at 60 FR 5210, January 26, 1995, and 59 FR 47349, September 15, 1994.

Sabre has not shown that our earlier analysis of the most favored nation clause cases was incorrect. Sabre again cites the court cases that held that a health insurer's insistence on ''most favored nation'' clauses did not violate the antitrust laws, *e.g., Ocean State Physicians Health Plan and Blue Cross & Blue Shield,* and additionally cites *E.I. Du Pont de Nemours & Co.* v. *FTC,* 729 F.2d 128 (2d Cir. 1984). In *Du Pont* the Second Circuit reversed an FTC order that held unlawful several practices used by the major suppliers of lead additives for gasoline, one of which was a ''most favored nation'' clause given purchasers. Sabre Comments at 21–22.

Sabre has again failed to show that the health insurer clauses upheld by the courts are equivalent to the parity clauses imposed by the systems on their airline customers. In particular, Sabre has not shown that the parity clauses provide consumer benefits like the ''most favored nation'' clauses used by health insurers. In *Ocean State Physicians* the First Circuit held that Blue Cross' conduct benefited consumers by giving them lower prices. 883 F.2d at 1111. *Cf. Blue Cross & Blue Shield, supra,* 65 F.3d at 1415 (''the antitrust laws seek to encourage'' a buyer's efforts to minimize its costs). Unlike the health insurer clauses, the parity clauses do not enable any consumers to receive lower prices. The clauses instead force airlines to buy

services they neither need nor want, and the resulting increase in airline costs can cause consumers to pay higher fares or receive less service. Furthermore, one court has indicated that most favored nation clauses may injure competition. *Willamette Dental Group P.C.* v. *Oregon Dental Service Corp.*, 882 P.2d 637, 642–643 (Or. App. 1994).

Sabre does not attempt to show that parity clauses result in lower costs for airline participants or their customers, the travelling public. Instead, Sabre initially claims that a most favored nation clause has the same effect whether imposed by a seller or a buyer. Sabre Comments at 21. But a seller's insistence on most favored nation treatment, unlike a buyer's demand for such treatment, is unlikely to result in lower prices. Sellers, after all, are typically interested in obtaining higher revenues, which typically does not result in lower prices.

Equally unavailing is Sabre's theory that its parity clause is comparable to the health insurer clauses, because the parity clause ensures that Sabre receives the same information as competing CRSs. Sabre Comments at 22. This theory again ignores Sabre's position as a seller of the service, not a buyer. Significantly, Sabre has made no showing that its airline participants benefit as a result. Sabre's parity clause operates as a means of saving Sabre the trouble of competing to entice airlines to purchase a higher level of CRS service—the clause enables Sabre to compel such participation if an airline participating in Sabre chooses to participate at the higher level in another system without regard for the price and quality of Sabre's service or the airline's need for the increased functionality in Sabre.

Sabre argues that we may not rely on the Justice Department's position, reflected in the consent decrees cited in our notice of proposed rulemaking, that the ''most favored nation'' clauses unreasonably restrain competition. Allegedly we cannot prefer the Justice Department's position to the holdings of the courts. Sabre Comments at 22–23. This argument misconstrues the scope of our authority to prohibit unfair methods of competition. We may outlaw conduct that the courts would find permissible under the antitrust laws. *United Air Lines,* 766 F.2d at 1114. And Sabre wrongly implies that the courts necessarily disagree with the Justice Department's position. The Seventh Circuit, for example, amended its opinion in *Blue Cross & Blue Shield* to state that it had not rejected the Justice Department's view that ''most favored nation'' clauses may be anti-competitive in some cases—the court noted instead that there was no evidence of an anti-competitive effect in the case before it. 65 F.3d at 1415. And one district court recently refused to dismiss a Justice Department suit against a most favored nation clause imposed by a health insurer. *United States* v. *Delta Dental of Rhode Island,* 943 F.Supp. 172 (D.C. R.I. 1996).

The *Du Pont* case cited by Sabre is also consistent with our analysis. That case involved an FTC decision that invalidated several pricing practices used by manufacturers of lead additives for gasoline; one of the practices was a most favored nation clause protecting the manufacturer's customers against other customers obtaining lower prices. In reversing the FTC's decision, the Second Circuit found that the competitive conditions in the gasoline additive industry, which were far different from those in the CRS business, did not support the FTC's conclusion. Although the gasoline additive industry was an oligopoly, its participants did not have monopoly power and competed with each other: ''Notwithstanding the highly concentrated structure of the industry, there was substantial price and non-price competition during the 1974–1979 period that is the subject of the [FTC's] complaint.'' 729 F.2d at 132. In the CRS business, on the other hand, there has been no price or non-price competition on providing services to airlines. Furthermore, the Court held that the FTC could invalidate a business practice as unfair on ''proof of a violation of the antitrust laws or evidence of collusive, coercive, predatory, or exclusionary conduct * * *.'' 729 F.2d at 140. The Court reversed the FTC in part because there was no evidence of coercive conduct. *Ibid.* Here, in contrast, there is such evidence—the system refuses to provide any CRS services to an airline unless the airline agrees to buy at least as high a level of service from the system as the airline buys from any other system.

We therefore conclude that the most favored nation clause cases cited by Sabre do not support its argument that we may not prohibit parity clauses. We will instead make final our tentative conclusion that we may define the parity clauses as unfair methods of competition, since a parity clause is equivalent to an unlawful tying agreement, a denial of access to an essential facility on reasonable terms, and an attempt to maintain monopoly control over electronic access to each system's subscribers. We will begin with our conclusion that the parity clauses are equivalent to a tying arrangement prohibited by the Sherman Act.

Tying Arrangements

We viewed parity clauses as analogous to the tying arrangements prohibited by the antitrust laws, since the parity clauses result from a system's use of its market power to force each participating airline to purchase services that it may not want as a condition to obtaining any service. A tying arrangement—a seller's agreement to sell one product only on condition that the buyer purchase a second product from the seller (or promise not to buy the product from another seller)—is a *per se* violation of the Sherman Act if the seller has appreciable market power in the tying product and if the arrangement affects a substantial volume of commerce in the tied product. *Eastman Kodak Co., supra,* 504 U.S. at 461–462 (1992). Tying arrangements are objectionable because they force buyers to accept conditions that they would not accept in a competitive market. See, *e.g., Jefferson Parish Hospital,* 466 U.S. at 12–15. As the Court has explained, ''The essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms.'' When a seller imposes a tying arrangement on a buyer, ''competition on the merits in the market for the tied item is restrained * * *.'' *Jefferson Parish Hospital,* 466 U.S. at 12. A tying arrangement can well cause consumers to pay higher prices, a result that violates the goals of the antitrust laws. *Eastman Kodak Co.,* 504 U.S. at 478.

A parity clause is like a tying arrangement, because the clause represents the system's use of its market power to force each airline participant to buy at least as much service from the system as it buys from any other system. Like the tying arrangements proscribed by the Sherman Act, the CRS clauses restrict competition on the merits for the tied service—the higher levels of service offered by each system—and cause the systems' airline participants to pay higher prices. Since each system offers several different levels of participation, as well as various enhancements, the parity clause is akin to a tie, since the system will not sell an airline any service unless the airline buys a specified level of services.

Sabre does not challenge our reasoning that the parity clauses have the effect of a tying arrangement. Instead, Sabre objects that there is no tie, since each level of service is

mutually exclusive and thus each level of service is being sold separately rather than in combination. Sabre Comments at 24.

Sabre's position is obviously flawed—even if each level of service is mutually exclusive, Sabre's parity clause operates in practice like a prohibited tying arrangement. An airline can not obtain the services included within the lower level of service if it buys a higher level of service from any other system, even though Sabre otherwise offers the lower level of service as a separate product to airline participants. As explained above, the parity clause has the same effects as an unlawful tying arrangement—the parity clause restrains competition in the tied product, the higher levels of service, and the clause causes airlines to pay higher fees.

In addition, while Sabre sells different levels of service as separate items, Sabre also sells enhancements as additions to the various levels of service. Alaska Comments at 2, n. 1. Enhancements also operate as tied products. Indeed the pending dispute between Sabre, on the one hand, and Alaska and Midwest Express, on the other hand, involved the two airlines' failure to buy enhancements. Midwest Express Comments at 11.

The Essential Facility Doctrine

Secondly, we tentatively determined that the parity clauses are comparable to a violation of the essential facility doctrine. That doctrine requires a firm that controls a facility essential for competition to give its competitors access to the facility on reasonable terms. The firm will violate section 2 of the Sherman Act if it denies access (or imposes unreasonable conditions on access). A facility is essential if it cannot be feasibly duplicated by a competitor and if the competitor's inability to use it will severely handicap its ability to compete. 61 FR 42203, citing *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); and *Delaware & Hudson Ry.* v. *Consolidated Rail Corp.*, 902 F.2d 174 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 2041.

In our last major rulemaking we determined that each of the systems is comparable to an essential facility and must therefore offer airlines access to its services on reasonable terms. 57 FR at 43790. We tentatively concluded in this proceeding that a system is denying access on reasonable terms if it makes a non-owner airline's participation contingent on the airline's agreement to purchase at least as high a level of services from that system as it does from any other system, without regard for the price or quality of the system's services. 61 FR 42203.

Sabre objects on several grounds to our reliance on the essential facility doctrine. According to Sabre, we may not consider a CRS to be an essential facility because the Ninth Circuit held in a private antitrust case, *Alaska Airlines* v. *United Air Lines*, 948 F.2d 536 (9th Cir. 1991), that CRSs were not essential facilities. As we explained in both the notice of proposed rulemaking in this proceeding and in our last major CRS rulemaking, the Ninth Circuit's decision does not preclude us from basing our CRS rules on an analogy with the essential facility doctrine. 57 FR at 43791; 61 FR at 42203.

Sabre further claims that, if anything is ''essential'', it is the information provided by important airlines, since otherwise the CRS cannot provide adequate information to travel agents and so cannot obtain subscribers. Sabre Comments at 25. But the relationship between the systems and airline participants indicates that an airline's control over its information does not give it any power over the systems. Participating airlines have had little or no ability to bargain over a system's terms for participation. The systems instead have been able to impose terms on airlines that are not disciplined by market forces.

Sabre's primary defense is its argument that the essential facility doctrine allows the owners of essential facilities to impose reasonable non-discriminatory conditions on access to the facility and that the parity clause is such a reasonable non-discriminatory condition. Sabre Reply at 21–22. We disagree—the clause is not a reasonable condition. The clause forces airlines to either buy more service than they want from some systems or less service than they would like from other systems. The airlines, moreover, obtain no benefits in return.

In arguing that the clause is a reasonable condition for access, Sabre alleges that the clause carries out the same goal as our mandatory participation rule, which requires system owners to participate in competing systems at the same level that they participate in their own system. Sabre Reply at 21. However, as shown, the parity clauses, unlike our rule, do not require that the service be offered on commercially reasonable terms. More importantly, we adopted the mandatory participation rule to keep system owners from distorting CRS competition by unreasonably limiting their participation in competing systems. Airlines like Alaska have no incentive to distort CRS competition, since they have nothing to gain from doing so if they neither own nor market a system.

Monopolization

Finally, since, as shown, most travel agencies subscribe to only one CRS, the system used by those agencies will essentially hold a monopoly over the electronic provision of information to the agencies and the agencies' ability to carry out booking and ticketing transactions electronically. If an airline established a direct link between its internal reservations system and a travel agency, the agency could obtain some information and conduct some transactions without using the CRS. A parity clause, however, requires an airline to participate in a system at a higher level than it prefers (and to pay higher fees than it would otherwise pay for CRS services). The parity clause thereby reduces the travel agencies' incentive to accept and use an alternative channel and the airline's ability to fund an alternative channel. Establishing direct links is costly, and an airline will have little incentive to incur that cost if it must still participate in every system at a high level (and pay the higher CRS fees). Alaska Reply at 27–28; Midwest Express Reply at 5–6.

By discouraging the creation and use of alternative methods of electronically providing travel agencies with information and booking capabilities, the parity clause helps to maintain the system's existing monopoly over electronic access to its subscribers. We found that the clause is comparable to conduct designed to maintain or create a monopoly, which would be unlawful under section 2 of the Sherman Act. 61 FR at 42203.

Sabre asserts that the parity clauses cannot be comparable to unlawful monopolization since the systems have a legitimate business reason for adopting the clauses—preventing exclusionary tactics by other systems. Sabre Comments at 26. The clauses, however, apply to all airline participants, not just those with ties to a CRS, and thus are not legitimate insofar as they restrict the choices of non-owner airlines.

Sabre and Worldspan also attack our analysis of an airline's incentives for creating a direct link with travel agencies. They claim that an airline will have a greater incentive to find alternatives for CRSs if its costs go up, so the systems' enforcement of the parity clauses will give airlines the incentive to find alternatives such as direct links, since the clauses increase their CRS costs. See, *e.g.*, Sabre Comments at 26; Worldspan Comments at 6. We disagree—while airlines always

have an incentive to avoid higher CRS fees, the parity clause in practice seems likely to discourage airlines from creating such links, given the cost of doing so and the agencies' reduced incentive for using them.

The Exception for Owners and Sellers of Other Systems

While we have determined that parity clauses are an unfair method of competition when imposed on airlines that have no CRS affiliation, we agree with the Justice Department, Sabre, Worldspan, Delta, TWA, and System One/Continental that parity clauses can provide an effective means of countering some forms of discriminatory conduct by airlines that own or market a competing CRS. As suggested in our notice of proposed rulemaking, we will therefore create an exception in our rule allowing a system to enforce a parity clause against an airline that owns or promotes a competing system. We are not adopting the much broader exception sought by Sabre, which would apply to any airline with ties of any kind with a CRS-owning airline, such as a code-sharing relationship. Sabre has not shown that that exception is necessary, and it would virtually destroy the prohibition against parity clauses.

Discriminatory Conduct by Airlines with CRS Affiliations

As we stated in our notice of proposed rulemaking, 61 FR at 42206, in the past we have considered cases where a foreign airline apparently reduced (or ended) its participation in a U.S. system in order to frustrate the U.S. system's ability to market itself in the foreign carrier's homeland. See, *e.g.*, *Complaint of American Airlines against British Airways*, Order 88–7–11 (July 8, 1988). We have been prepared to take countermeasures against foreign airlines that deny U.S. systems a fair chance to compete in the foreign airline's homeland, thereby interfering with the right of the U.S. airlines affiliated with those systems to a fair and equal opportunity to compete. Furthermore, in our last major CRS rulemaking we concluded that there was evidence that U.S. airlines had limited their participation in competing CRSs in order to promote the system that they owned, a conclusion which caused us to adopt the mandatory participation rule. 56 FR at 12608; 57 FR at 43800. That rule requires each airline with a significant ownership interest in a CRS operating in the United States to participate in other systems at at least as high a level as it participates in its own system, assuming the terms for participation are commercially reasonable. 14 CFR 255.7.

Sabre, moreover, has stated that it created its parity clause to keep other airlines from engaging in unfair competition by participating at a high level in their affiliated system while participating at a low level in competing systems like Sabre, and that it has successfully used the parity clause in recent years to stop foreign airlines from discriminating against Sabre and in favor of a system affiliated with the foreign carrier. 61 FR at 42206.

In recognition of the apparent value of the parity clauses in preventing discrimination by airlines affiliated with a competing CRS, we specifically requested parties to comment on whether a rule prohibiting parity clauses should include an exception allowing a system to enforce a parity clause against an airline that owned or marketed a competing CRS. 61 FR at 42197, 42198, 42206.

The Parties' Comments

In response to our request for comments, the Justice Department, Sabre, Worldspan, Delta, TWA, and Continental/System One stated that they supported an exception that would allow a system to use a parity clause against airlines owning or marketing a competing system. Galileo opposes any such exception, while Midwest Express does not object to the enforcement of parity clauses against foreign airlines that own or market a system. Alaska opposes any exception allowing enforcement of a parity clause against an airline without an ownership interest in a system, even if the airline markets a system.

The Need for the Exception

We have determined to allow systems to enforce parity clauses against airlines that own or market a competing system. As shown by our own experience with both U.S. and foreign airlines, an airline that owns a CRS may well decide to limit its participation in other systems in order to encourage travel agencies in areas where it is a major airline to use the system that it owns. While our past experience has involved airlines that either owned or were affiliated with an owner of a system, the same incentive to downgrade participation in competing systems could well exist in an airline that is marketing a system. Sabre has cited cases where some South American airlines reduced their participation in Sabre in order to create a marketing advantage for a system that they marketed but did not own. See 61 FR at 42206.

Galileo claims that discrimination is unlikely, as shown by the decisions of some of Galileo's airline owners and marketers to participate in other systems at a higher level than they participate in Galileo. Galileo Comments at 5–6. While this indicates that many airlines with CRS ties do not discriminate, it does not show that discrimination never occurs or is so unlikely that we should deny a system a useful tool for ending such discrimination. Indeed, Worldspan and its owners complain that Egyptair, which markets Galileo, is discriminating against Worldspan in order to promote Galileo. Worldspan Comments at 8–9; TWA Comments at 3. Continental and System One similarly complain that the TACA carriers in Central America, which are associated with American, are discouraging Central American agencies from using System One. System One/Continental Comments at 4–5.

Galileo and Alaska argue that any potential discrimination problem does not warrant creating an exception from the ban on parity clauses, because there are other means available for preventing discriminatory conduct by a foreign airline, in particular, the complaint procedures established by the International Air Transportation Fair Competitive Practices Act (''IATFCPA''), codified as 49 U.S.C. 41310(c). Sabre and Worldspan, however, point out that the statutory remedy has a number of restrictions that limit its effectiveness, including the requirement that the complaint be filed by a U.S. airline rather than a system. In addition, a system's use of the private contractual remedy has other advantages, including the avoidance of a dispute between the United States and the foreign government. Sabre Reply at 8–10; Worldspan Reply at 8–9. See also 57 FR at 43819.

The Scope of the Exception

Despite our willingness to create an exception in the rule that will protect the legitimate interests of U.S. systems, we do not wish to create an exception that will swallow the rule. We are therefore unwilling to accept Sabre's argument that a system should be entitled to enforce a parity clause against any airline whose reduced participation would arguably harm the system's ability to obtain subscribers. Sabre Comments at 32–33. In addition, as discussed below, Sabre has not shown that a broader exception is essential.

Sabre argues that a system could pay a regionally-important airline without any CRS ownership interest to lower its participation in competing systems and that the airline's discriminatory

lowering of its participation level would prejudice the marketing efforts of the competing systems. According to Sabre, a system owned by the dominant airline in a country has many ways to induce smaller airlines in that country to create a marketing advantage for itself. The system and its owner could secretly compensate a non-owner airline for lowering its participation level by giving it better pro-rates for interline travel, discount ground-handling services, lower prices for reservations services, and slots or space at crowded airports. Sabre Reply at 10–11.

We appreciate Sabre's concerns, but the broad exception urged by Sabre would destroy the ban on parity clauses. We note, for example, that Alaska has a code-sharing relationship with Northwest, one of Worldspan's owners; thus, if we created the broad exception sought by Sabre, we would deny Alaska the benefit of the general prohibition against parity clauses. Similarly, Alaska and Midwest Express are hosted in Sabre, so an exception allowing systems to enforce parity clauses against airlines hosted in another system would deny those two airlines the ability to lower their participation level in any system but Sabre.

At the same time, the expansive exception sought by Sabre seems to be unnecessary, for every case of discrimination cited by Sabre or otherwise known to us has involved either an airline that owned a system (British Airways, Iberia, and Japan Air Lines), an airline that was affiliated with an owner of a system (Air Inter and Iberia's domestic affiliates), or an airline that was marketing a system (Egyptair, the South American airlines cited by Sabre, and the TACA carriers cited by Continental and System One). We are unaware of any case where an airline without any affiliation with the owner or marketer of a system reduced its participation in another system in order to prejudice that system's ability to market itself to travel agencies.

Sabre claims that a number of small airlines hosted in Amadeus have been unwilling voluntarily to participate in Sabre at the same level that they participate in Amadeus. Sabre Reply at 11. However, Sabre has neither named the airlines nor explained how their levels of participation varied or why a small airline's presence in Sabre would significantly affect Sabre's ability to market itself in foreign countries. Our rule will allow Sabre to enforce the parity clause against all airlines that own or market a competing system, such as Amadeus, a category that should include the critical mass of airlines in the countries where Sabre is being marketed. In addition, even if we allowed Sabre to enforce the parity clause against airlines hosted in a system but not otherwise affiliated with that CRS, those airlines, unlike U.S. airlines, might well decide to withdraw entirely from Sabre, which would put them out of reach of the parity clause.

We are at this time also skeptical of Sabre's assertion that a system and its owner airlines could secretly pay an unaffiliated airline to lower its participation level in Sabre. Furthermore, given the importance of CRS use to airlines, it seems doubtful that an airline would change its level of participation in a system in exchange for unrelated benefits. And Sabre would presumably become aware of any efforts by the unaffiliated airline to market the system itself.

However, we are willing to reconsider the issue in our next major CRS rulemaking, if Sabre can show that unaffiliated airlines will change their participation level in order to distort CRS competition and can suggest a rule modification that would alleviate that problem without making the overall prohibition of parity clauses ineffective. In the meantime, we have the ability to address specific issues or problems with our foreign counterparts.

Having determined that systems should be allowed to enforce parity clauses against airlines promoting a different CRS, we must craft a rule that will allow systems to counteract discrimination by airlines owning or marketing a competing system without allowing them to coerce the participation level choices of airlines with no CRS interests. Midwest Express and Alaska have suggested we should give the systems the ability to enforce a parity clause against foreign airlines but not U.S. airlines. Alaska Reply at 11; Midwest Express Comments at 10–11. Because of the United States' international agreements, we may not discriminate against foreign airlines. If we adopted such an exception allowing the enforcement of parity clauses only against foreign airlines, we would be violating our obligation to treat U.S. and foreign airlines the same. See also Continental/System One Reply at 2, n. 3; Galileo Comments at 7, n. 4. Although Midwest Express has noted the CRS market in the United States differs in important respects from the CRS market in many foreign countries, Midwest Express Reply at 13–15, we doubt that those differences would justify a rule allowing systems to enforce parity clauses against all foreign airlines but no U.S. airlines.

The Justice Department has proposed that we allow enforcement of a parity clause against airlines that themselves or through affiliates own or market a system and that we define ''market'' as ''to cause, encourage, or persuade a person or entity to subscribe to a particular foreign or domestic system in return for some material benefit that is conditioned upon the number of subscriptions received.'' Justice Dept. Comments at 11. Two commenters would accept the Justice Department's proposal if the phrase ''that is conditioned upon the number of subscriptions received'' is struck, for they believe that a system could easily compensate an airline for marketing on some basis other than the number of subscriptions received. TWA Reply; System One/Continental Reply at 6.

We have decided not to adopt the Justice Department's proposed definition of ''to market'' or otherwise attempt to define that term in the rules. We are concerned that a system seeking to enforce a parity clause may have difficulty proving that an airline received a ''material benefit'' for marketing a competing system. We do not, however, intend to give the systems broad authority to assert that an airline participant is marketing a competing system. For example, neither a code-sharing relationship between a non-owner airline and an owner airline nor a hosting agreement between a non-owner airline and a system can cause the non-owner airline to be deemed a marketer of a system, unless the non-owner airline is specifically engaged in promoting the system to travel agencies. We appreciate the concern raised by Alaska that any exception for airlines marketing a system phrased in general language will give the systems too much discretion. Alaska Reply at 10–11. See also Midwest Express Reply at 13–15. But, given past and current problems with discrimination by airlines that market a CRS, some exception to our general ban on parity clauses seems necessary. However, we will reexamine the language of our rule if the systems attempt to use the exception to enforce a parity clause against airlines uninvolved in marketing another system.

Furthermore, we will impose a fourteen days notice requirement on the enforcement of a parity clause. A system may not enforce a parity clause against an airline without first giving us and that airline fourteen days written notice of its intent to take that action. The notice requirement would give the airline time to complain if it considered the system's action unauthorized by our rule and give us time to intervene if necessary. We included a similar requirement in our rule excusing a

system from complying with our rules if a foreign airline owns or is affiliated with a system that discriminates against U.S. airlines. Section 255.11; see 57 FR at 43829, 56 FR at 12637.

As provided by the Justice Department's proposed language, the exception in the rule will allow enforcement of a parity clause against an airline that markets a CRS in foreign countries, even if that CRS does not do business in the United States.

Inclusion of Enhancements

We will modify the rule's language to clarify its applicability to enhancements, as requested by Alaska. The language proposed by us would prohibit a system from requiring any airline to maintain ''any particular level of participation in its system'' on the basis of the airline's level of participation in another system. Alaska and Midwest Express ask us to revise the language to make it clear that a system also cannot use a parity clause to force an airline to purchase enhancements from it on the ground that the airline is purchasing those enhancements from another system. Alaska Comments at 4–5; Midwest Express Comments at 11–12. Galileo supports this proposal, Galileo Reply at 5–6, but Worldspan claims that it was not included in the notice of proposed rulemaking, Worldspan Reply at 4.

Both logic and policy support our inclusion of enhancements within the scope of the prohibition of parity clauses. First, the systems have used parity clauses to require airlines to purchase enhancements, not just to require them to upgrade their level of participation. Indeed, when Sabre at the beginning of 1996 threatened to use the parity clause against Alaska and Midwest Express, Sabre was demanding that the two airlines buy some enhancements from Sabre because their level of participation in one or more other systems allegedly included those enhancements. Alaska Comments at 3; Midwest Express Comments at 11. In addition, according to Alaska, Sabre's lawsuit against Alaska also argued that the parity clause applied to enhancements. March 8, 1995 Alaska Reply at 3–4. And we noted in the notice that Alaska's current interest in the parity clause issue involved its wish to avoid purchasing some enhancements from Sabre that it bought from other airlines. 61 FR at 42207.

Furthermore, the reasons for our findings that parity clauses reduce CRS and airline competition and make airline distribution less efficient are fully applicable to the systems' use of parity clauses to force airlines to buy enhancements. Whether a system is forcing an airline to buy an enhancement or to upgrade its overall level of participation, the system is using its market power to force an airline to buy unwanted services (or to cancel its purchase of services from another system that it did want to buy).

Thus, when we proposed to prohibit parity clauses, we intended to prohibit any use of the clauses, whether the system wanted to force an airline to upgrade to a higher level of participation or to buy enhancements that the airline preferred not to buy. As noted by Alaska, however, the proposed rule did not expressly refer to enhancements. We will therefore modify it to make that clear.

Worldspan opposes Alaska's proposal. It argues that including enhancements in the rule would substantially change the proposal, since enhancements allegedly had not been included in the proposal, and could not be included without a new notice of proposed rulemaking. Worldspan Reply at 4. Worldspan, however, has not explained why a prohibition against the use of parity clauses for enhancements would involve any new or different issues. The analysis of the benefits and harm caused by the clauses is the same in either case. Moreover, this proceeding resulted in large part from Sabre's use of its parity clause to make Alaska and Midwest Express buy enhancements, so the use of parity clauses to require airlines to buy enhancements was inherently at issue when we issued our proposal. Every party in the proceeding should have understood that the use of the clauses as to participation in enhancements would be an issue. We note in that regard that no one else has supported Worldspan's position on enhancements.

The Parties' Proposals for Other Rule Changes

Our request for comments on our proposal to prohibit parity clauses generated a number of requests for changes to other provisions in our CRS rules, especially the mandatory participation rule.

Galileo, Worldspan, Delta, Northwest, TWA, and System One/Continental urge us to amend the mandatory participation rule, 14 CFR 255.7, so that it requires airlines that market a system, not just airlines with a significant CRS ownership interest, to participate in other systems. Such an amendment would require Southwest to participate in Galileo, Worldspan, and System One, if it continues to promote Sabre. Southwest opposes this suggestion, as does Sabre.

United argues that we should eliminate the mandatory participation rule, since CRS owner airlines should be able to choose the level of CRS participation needed for distributing their services. Delta also favors the elimination of the mandatory participation rule if it is not extended to cover airlines marketing a system. TWA, on the other hand, supports extending the mandatory participation rule to airlines that market a system, but asserts that the rule should require only participation at the full availability level, not at higher levels.

Delta suggests that we should bar systems from contractually tying non-travel agency services to participation in agency services. Under Delta's proposal, an airline could choose whether to participate in the information and booking functions provided by a system to Internet sites.

Worldspan asks us to amend the rule authorizing a system to take countermeasures against foreign airlines affiliated with a CRS, 14 CFR 255.11, so that a system would have broader authority to react to discriminatory treatment.

Finally, ASTA and USTAR contend that, if we adopt the parity clause prohibition, we should allow travel agencies to cancel their CRS contracts if the quality of a system's service is greatly reduced by a carrier's decision to lower its participation in that system.

We have decided not to proceed on any of these suggested changes before the next major rulemaking, which is scheduled for this year. We could not in any event adopt any of these proposals without a new notice of proposed rulemaking, since none of them were proposed in our notice of proposed rulemaking. We have issued an advanced notice of proposed rulemaking on the CRS rules, since, as discussed above, those rules will expire at the end of 1997 unless extended. 62 FR 47606, September 10, 1997. The suggestions for additional rule changes made by the parties can be considered in the coming rulemaking.

Procedural Issues

We have considered Alaska's request for a rule barring parity clauses through informal rulemaking procedures. Those procedures, which included the opportunity to file comments and reply comments on our notice of proposed rulemaking, have enabled every party to fully present its position on the legal and factual issues.

Our use of informal rulemaking procedures here follows our consistent past practice. When we reexamined and readopted the Board's rules, we used

informal rulemaking procedures. No one asserted that those procedures were improper or unfair, 57 FR at 43792, although American had initially argued that a formal hearing should be held to resolve factual disputes. *See* 56 FR 12586, 12603, March 26, 1991. In an earlier proceeding we used informal rulemaking procedures to amend the CRS rules as part of a package of rules designed to reduce airline delay problems. 52 FR 34056, September 9, 1987.

Most importantly, when the Board adopted the original CRS rules, it did so in an informal rulemaking proceeding over United's objections, and the Seventh Circuit affirmed the Board's procedural decision in *United Air Lines* v. *CAB*.

Sabre nonetheless argues that we may not adopt the proposed ban on parity clauses without holding a formal hearing. Sabre Reply at 18–20. Sabre's objection has no merit.

Sabre recognizes that the Seventh Circuit held that the Board could adopt comprehensive CRS rules without a formal hearing. Sabre Reply at 19. Sabre, however, suggests that the Court decided the United Air Lines case incorrectly, because the language of the statute authorizing us to define and prohibit unfair methods of competition and unfair and deceptive practices, 49 U.S.C. 41712, allegedly requires the holding of a formal hearing. Sabre Reply at 19, n. 20. We disagree. As the Seventh Circuit explained in rejecting the same contention made by United, the statute clearly authorizes the use of informal rulemaking procedures for prohibiting unfair methods of competition and unfair and deceptive practices. *United Air Lines*, 766 F.2d at 1111–1112.

Sabre wrongly contends that this rulemaking is so different from the rules upheld in *United Air Lines* that the Seventh Circuit's decision is inapplicable here. Sabre argues that we cannot use informal rulemaking procedures since our decision necessarily involves a determination on the ''nature and validity of past conduct.'' Sabre Reply at 19. Most rulemaking decisions made by regulatory agencies, however, involve findings about the reasonableness of the private parties' past conduct, as did the Board's original CRS rulemaking. *Cf. United Air Lines*, 766 F.2d at 1107. Moreover, like the Board's CRS rules, this rule imposes no sanctions on anyone for past conduct.

Sabre similarly errs in arguing that a formal hearing is needed here because the allegations made by the parties are unsupported and ''under cross-examination would be exposed as seriously flawed.'' Sabre Reply at 19. Most rulemaking decisions require the resolution of disputed issues of material fact, but that does not force the agency to hold a formal hearing. The Administrative Procedure Act, after all, expressly authorizes agencies to adopt rules without such a hearing. Indeed we may decide adjudicatory cases without holding a formal hearing, even when there are material factual issues in dispute. See, *e.g.*, *City of St. Louis* v. *DOT*, 936 F.2d 1528, 1534, n. 1 (8th Cir. 1991). We are satisfied, moreover, the record here amply supports our findings in this rule.

According to Sabre, however, this proceeding is also different from the Board's original rulemaking because our proposed rule ''may also retroactively alter some expectations,'' since the rule would allegedly ''disrupt'' the expectations of the systems and their subscribers. Sabre Reply at 19–20. The Board's rules in fact were much more disruptive. See *Republic Airlines* versus *United Air Lines*, 796 F.2d 526 (D.C. Cir. 1986), where the Court held that a system could require an airline to pay higher fees for CRS participation, since the Board's rules invalidated the contract allowing the airline to pay lower fees. We are not interferring here with any party's reasonable contract expectations. But, even if we were disrupting existing contracts, we could still act by rulemaking. As the Court stated in *Republic*, 796 F.2d at 528, ''There is of course no question that the CAB had the power, as a matter of federal law, to render the violative CRS contracts entered into by the airlines unenforceable from the effective date of the rule.''

Finally, Sabre alleges that a hearing is necessary since we cannot adopt rules prohibiting unfair methods of competition without first finding that antitrust violations have occurred, a step which would require a formal hearing, according to Sabre. Sabre Reply at 19, n. 20. Sabre's allegation is plainly wrong, for we need not find that anyone has violated the antitrust laws as a condition for prohibiting a practice as an unfair method of competition. 49 FR at 32545. *Cf. United Air Lines*, 766 F.2d at 1119–1120.

Worldspan asserts that we cannot fairly rely on our past analyses of the CRS business and its impact on airlines, both because those findings are now several years old and because we allegedly did not specifically identify which of the past findings are relevant to our proposed rule. Worldspan Comments at 4. Our use here of our earlier rulemakings and studies is neither unfair nor irrational. We relied on our past findings on the basic structure and operation of the CRS and airline businesses, and their structure and operation have not changed significantly since our last rulemaking. The past findings on which we relied were identified in the notice of proposed rulemaking. If Worldspan believed that our past findings were outdated or inaccurate, it had the chance in its comments to argue that those findings were no longer valid, as we specifically said in our notice. 61 FR at 42206. *Cf.* 57 FR at 43793.

The other procedural issues concern the motions by the Department of Justice and America West for leave to file pleadings after the due date for comments or reply comments and the late submission of letters from a number of travel agencies and from the European Civil Aviation Conference (ECAC). The Justice Department filed its comments soon enough to give other parties the ability to address its arguments in their reply comments. While America West filed its reply comments long after the applicable deadline, its reply responds to the points in the initial round of comments and contains no new factual or legal arguments. The late travel agency letters, which were largely generated by Sabre, primarily used Sabre's form response and thus duplicated the views stated in the timely letters. ECAC's comment states its position but does not present new arguments and evidence. Thus the acceptance of the late comments and letters will not prejudice anyone. We will therefore accept the Justice Department's comments, America West's reply comments, ECAC's comments, and the late letters from travel agencies.

Finally, we note that Sabre has tried to persuade the Departments of State and Commerce, the United States Trade Representative, and the Office of Management and Budget to keep us from adopting a rule prohibiting parity clauses. Our ex parte docket contains OMB's outline of Sabre's meeting with OMB officials.

Regulatory Process Matters

Regulatory Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits under section 6(a)(3) of that order. The proposal is also significant under the regulatory policies and

procedures of the Department of Transportation, 44 FR 11034.

Our notice of proposed rulemaking stated our tentative conclusions that the rule would benefit competition and innovation and give non-owner participating airlines a greater ability to choose the distribution methods that best meet their needs. We further stated that we did not think the rule would significantly injure travel agencies or affect the systems' operations. Among other things, no airline appeared likely to use the rule to lower its level of participation in any system below the full availability level. We found that the costs and benefits of the proposed rule appeared to be unquantifiable, but we asked interested persons to provide information on the costs and benefits. 61 FR at 42207.

After reviewing the comments and reply comments submitted in response to our notice of proposed rulemaking, we have determined that the rule should provide significantly more benefits than costs. We do not have data, however, that would enable us to accurately quantify the benefits of the rule for airlines and airline passengers and the costs of the rule for systems and travel agencies, although we had asked for such data. We are therefore providing a qualitative assessment of the rule's costs and benefits.

The rule will benefit airlines that do not own or market a CRS because it will allow them to choose the level of service purchased from each system. The rule will thereby enable each such airline to choose the most efficient method for distributing its services. Airlines can also avoid purchasing services they do not need, which may save them significant amounts of money. Alaska and Midwest Express, for example, had estimated that Sabre's most recent threat to enforce the parity clause against them would raise their booking fee expenses by more than ten percent. 61 FR at 42201.

The rule should also cause the systems to compete for airline purchasers of higher-level services. Although virtually all airlines must participate in each system at the full availability level, many non-owner airlines do not need to purchase higher levels of service from each system (our mandatory participation rule generally requires airlines with significant CRS ownership interests to buy an equivalent level of service from each system). Since a system's services will be more attractive to travel agencies if more airlines participate at higher levels, and since higher-level participation by more airlines will produce more revenue for a system, the systems should compete for higher-level participation by offering better service and perhaps lower fees.

In addition, if airlines can operate more efficiently, they can reduce their costs, which should lead to lower fares for airline travellers. However, while CRS costs are relatively large in relation to airline profit margins, they are relatively small in relation to total operating costs, so lower CRS costs are unlikely to result in large fare decreases.

We do not expect the rule to impose a substantial burden on the systems. The rule will not require the systems to change their method of operations. If the systems compete for higher-level airline participation, they are likely to incur additional marketing and developmental expenses, but nothing in the record indicates that those expenses would be significant. The systems may also have to lower their fees for higher-level participation. However, since the fees charged airlines do not currently appear to be disciplined by market forces, any marketplace discipline on the systems' fees would be economically beneficial.

The rule should not significantly affect travel agencies. We doubt that any significant airline that currently participates in CRSs will reduce its level of participation in any system below the full availability level, so travel agents using any system should continue to have the ability electronically to obtain information on the airline's schedules, fares, and availability, to make bookings, and to issue tickets. While some airlines are likely to reduce their level of participation in some systems, the operations of the travel agents using those systems should not become significantly less efficient, since the higher-level participation does not appear to greatly affect the efficiency of agency operations. Furthermore, if the systems could continue to enforce the parity clauses, airlines that would otherwise prefer to buy a higher level of service from one or a few systems would have the option of reducing their level of participation in those systems rather than upgrading their level of participation in the other systems. Thus the rule should not cause a significant reduction in the efficiency of travel agency operations.

Barring the systems from enforcing a parity clause against airlines that own or market a competing system would reduce CRS competition, since some airlines with CRS ties might well choose to discriminate against competing systems in order to create a marketing advantage for the system that they own or promote. Since our rule will allow systems to continue enforcing a parity clause against airlines that own or market a system, our rule should not cause any distortions in CRS competition.

The Department does not believe that there are any alternatives to the rule which would accomplish the goal of giving each participating carrier (other than carriers with a significant ownership interest in a CRS, which remain bound by section § 255.7(a)) the ability to choose its level of participation in each system.

Some parties have suggested that we should adopt a rule allowing a system to enforce parity clauses when the price and quality of its higher level of participation are comparable to those of the systems from which the airline is already purchasing the higher level of service. That proposal, however, would neither promote price and service competition among the systems for higher-level participation nor give participating airlines the ability to choose what service levels were most efficient for them.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller airlines and travel agencies. The notice of proposed rulemaking contained our initial regulatory flexibility analysis. This rule and our notice of proposed rulemaking set forth the reasons for our adoption of Alaska's rule proposal and the objectives and legal basis for the rule.

A number of the commenters submitted their views on our proposal's impact on small entities. We considered their comments in deciding whether to make final our proposed ban on parity clauses final.

The rule will primarily affect two types of small entities, smaller airlines and travel agencies. To the extent that airlines can operate more efficiently and reduce their costs, the rule will also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be, although the amount may not be large.

The rule, as explained above, will give smaller non-owner airlines the ability to choose the level of service they will buy from each system by barring the use of airline parity clauses. Smaller non-owner airlines will be able to choose how they will distribute their services and thus be better able to operate more efficiently.

The rule will not directly affect travel agencies but may affect the operations of smaller travel agencies. If an airline reduces its level of participation in one or more systems without reducing its level of participation in all of the systems, agencies using a system in which the airline reduced its level of participation would not be able to operate as efficiently as before or as efficiently as some of the agencies' competitors. That loss in efficiency would be significant for an agency only if the airline provided a substantial amount of the airline service in the area where the agency conducts its business and if the reduction in the level of participation made it substantially more difficult for an agent to book the airline's services. We doubt that any significant airline currently participating in the systems will drastically reduce its level of participation in any system, so changes in participation levels are not likely to significantly interfere with the efficiency of travel agency operations. Furthermore, the parity clauses give airlines the option of either reducing their level of participation in the favored system or upgrading their level of participation in other systems. Since a participating airline may well choose to reduce its participation level in the favored system, parity clauses do not ensure that every airline will participate at a high level in all systems. For these reasons, we conclude that the rule will not significantly harm travel agencies.

In addition, the rule should encourage airlines and other firms to develop alternative means of transmitting information on airline services and enabling travel agencies to carry out booking transactions. In the long term these developments would benefit travel agencies.

The only alternative rule suggested by the commenters was Sabre's proposal that we allow each system to enforce a parity clause as long as that system's terms for the higher level of participation or enhancement were comparable to the terms offered by the competing system in which the airline was already participating at a higher level. As discussed above, we decided against adopting this proposal, since it would not promote competition in the CRS and airline industries and would force airlines without any CRS affiliation to buy more services than they considered desirable.

Our rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

The rule we are adopting will have no 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 12812, we have determined that the rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

List of Subjects for 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation amends 14 CFR Part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712, recodifying 49 U.S.C. 1301, 1302, 1324, 1381, 1502 (1992 ed.).

2. Section 255.6 is amended by adding paragraph (e) to read as follows:

§ 255.6 Contracts with participating carriers.

* * * * *

(e) No system may require a carrier (other than a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system) to maintain any particular level of participation or buy any enhancements in its system on the basis of participation levels or enhancements selected by that carrier in any other foreign or domestic computerized reservations system. A system may not compel a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system, to maintain a particular level of participation or buy an enhancements in its system on the basis of participation levels or enhancements selected by that carrier in another foreign or domestic computerized reservations system, until 14 days after it has given the Department and such carrier written notice of its intent to take such action.

Issued in Washington, D.C. on October 28, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–29295 Filed 11–4–97; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 375

[Docket No. RM95–16–000; Order No. 596]

Regulations for the Licensing of Hydroelectric Projects; Final Rule

Issued October 29, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its procedural regulations governing applications for licenses and exemptions for hydroelectric projects. The regulations offer an alternative administrative process whereby in appropriate circumstances the pre-filing consultation process and the environmental review process will be combined. This alternative process is designed to improve communication among affected entities and to be flexible and tailored to the facts and circumstances of the particular proceeding. The final rule does not delete or replace any existing regulations.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington DC 20426.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

I. Introduction

On November 26, 1996, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to revise its procedural regulations governing applications for licenses for hydroelectric projects.[1] In response to the comments received,[2] the Commission adopts a final rule in this proceeding which offers an alternative administrative process in which the pre-filing consultation and the environmental review processes will be combined. This alternative process is designed to improve communication between affected entities and to be flexible and tailored to the facts and circumstances of the particular proceeding. The final rule does not delete or replace any existing regulations.

II. Purpose of the Final Rule

The NOPR was issued in response to a petition by the National Hydropower Association (NHA), seeking completely new Commission regulations to improve the licensing process for hydropower applicants. The Commission agreed with commenters on NHA's petition, that adoption of its proposed rules would not be fair to other entities interested in the licensing process, such as resource agencies, Indian tribes and citizens' groups, and would not in fact expedite licensing proceedings. The Commission noted, however, that the collaborative option in NHA's proposal resembled the alternative procedures that the Commission had been developing for use on a case-by-case basis as requested by the applicant, pursuant to waivers granted by the Office of Hydropower Licensing. The Commission determined that the experience with the alternative procedures had been positive, that many applicants and interested entities appeared to be interested in pursuing the alternative procedures, and that it would be helpful to refine, clarify, and codify the procedures in the regulations.

A wide range of entities, representing the hydropower industry, state and federal resource agencies, citizens' groups, and an Indian tribe, filed comments generally supporting adoption of the rule proposed in the NOPR. The commenters made a number of recommendations for improving the proposed rule, many of which are adopted in the final rule, as discussed in detail below.

The final rule offers alternative administrative procedures for the processing of applications for licenses to construct, operate, and maintain hydropower projects, including applications for certain major amendments to such licenses, and for applications for exemption. Under the final rule, in appropriate circumstances pre-filing consultation and environmental review can be combined into a single process. This alternative process can be used only if there is a consensus among the interested entities to make use of it (consent of the applicant is required but agreement of everyone interested is not), and is designed to be flexible and tailored to the facts and circumstances of the particular proceeding. The final rule does not delete or replace any existing regulations, but would supplement the existing regulations by offering applicants an opportunity to use the alternative procedures.

The present regulations require applicants for a license to engage in consultation with federal and state resource agencies and Indian tribes during the preparation of the application for the license and prior to filing it. Thereafter the Commission performs an environmental review of the application pursuant to the National Environmental Policy Act (NEPA)[3] and related statutes. The final rule is intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, and by improving communication among the participants in the licensing process. We hope that adoption and use of the alternative procedures, on a voluntary basis by applicants, will result in expedited licensing proceedings before the Commission, including the narrowing of contested issues and the submission of offers of settlement that can be used as a basis for licensing orders.

III. Discussion

A. Application for and Scope of Alternative Procedures

In proposed § 4.34(i)(1) we set forth the scope of the alternative procedures and who could request them. The proposed regulatory text stated that the applicant could submit a request to the Commission to use the alternative procedures where it intended to file an application for a hydropower license or for the amendment of a license subject to the provisions of the pre-filing consultation regulations at § 4.38.

Some commenters pointed out that the title of the rule in the notice in the **Federal Register** indicated it only applied to applications for relicense and that it should be changed to include all applications for license. A commenter recommended that an applicant be required to join with other interested entities, such as resource agencies, in making such a request.[4] Commenters also have asked whether the alternative

[1] 77 FERC ¶ 61,209 (1996).

[2] The commenters are listed in Appendix A.

[3] 42 U.S.C. 4321 *et seq.*

[4] Comments of U.S. Department of Commerce, National Marine Fisheries Service (NMFS), at 5.

procedures apply to applications for preliminary permits or exemption.

We will not require the applicant to obtain the express consent of others in order to submit a request to use alternative procedures in preparing its application. An applicant may voluntarily request to use the alternative procedures. As provided in the final rule and discussed below, the Commission will give public notice of, and interested entities may submit comments on, the applicant's request to use alternative procedures. If an applicant for a hydropower license wishes to use the standard procedures in preparing its application, it may comply with the pre-filing consultation requirements of § 4.38 or § 16.8 of the regulations and need not prepare a preliminary draft NEPA document.

The title of the notice accompanying this final rule in the **Federal Register** accurately describes the application of the new rule, extending to all applications for the licensing of hydroelectric projects. The alternative procedures apply only to applications for license and amendments to licenses that are subject to the pre-filing consultation rules contained in § 4.38 and § 16.8 of the regulations. Since applications for preliminary permit are not subject to such requirements, we see no reason to make the alternative procedures available to such applicants. On the other hand, applications for exemption are subject to the pre-filing consultation requirements of § 4.38, and we conclude that these alternative procedures should be available to applicants for exemption, if they wish to take advantage of them and meet the applicable requirements of the final rule. Accordingly, we are making changes in the rule to clarify that it also applies to applicants for exemption.

B. Objectives of Process

In the proposed regulatory text at § 4.34(i)(2), we set forth the goals of the alternative procedures, which included integrating the pre-filing consultation process and the environmental review process, facilitating greater participation by Commission staff and the public in the pre-filing consultation process, allowing the applicant to prepare an environmental assessment (EA) or a contractor to prepare an environmental impact statement (EIS), encouraging the applicant and interested persons to narrow any areas of disagreement, and promoting settlement of the issues raised by the hydropower proposal.

Commenters have recommended that these statements of objective be broadened in the final rule. They have asked that the interests of Indian tribes be kept in mind.[5] A commenter has also asked that the stated objectives include providing for effective participation in the process by citizens' groups, including the provision of financial assistance where appropriate, and allowing such participants a role in selecting contractors to conduct scientific studies and prepare required documents.[6] Commenters have asked the Commission to keep in mind in regard to the proposed regulations the goal of promoting competition between rival applicants for proposed hydropower facilities.[7] A commenter was concerned that the proposed rule may suggest that under the alternative procedures the Commission would delegate to an outside party its responsibility for NEPA documents.[8]

We believe that the language of the objectives of the alternative procedures should be revised. We have changed proposed § 4.34(i)(2)(i) to reflect the goal of combining into one process not only the pre-filing consultation procedures and the environmental review process under NEPA, but also those administrative processes associated with section 401(a) of the Clean Water Act[9] and other statutes. We are revising proposed § 4.34(i)(2)(ii) to make clear that the goal of the alternative procedures includes greater participation in the process by and improved communication among all concerned entities, including the applicant, resource agencies, Indian tribes, the public and Commission staff. While meeting certain minimum requirements of openness and fairness, the process is designed to be as flexible as possible, tailored to the circumstances of each case.

Section 4.34(i)(2)(iv) is revised to state that the rule is designed to promote cooperative efforts by the applicant and interested entities, including the sharing of pertinent information about the resource impacts of the applicant's hydropower proposal and appropriate mitigation and enhancement measures. The goal of encouraging settlement is not confined to submitting a formal offer of settlement among parties on the application when it is filed, but includes any agreement that can be reached that narrows the range of contested issues, both on necessary studies and on mitigation and enhancement measures.

We decline to modify the goal statement in the regulations as recommended by HRC. We have no objection to an applicant voluntarily deciding to provide financial assistance to citizens' groups to facilitate their effective participation in the alternative process or to allowing such groups an appropriate role in choosing contractors to do necessary studies. We believe that if any participant believes such measures are important and would further the successful completion of the process and the achievement of its other objectives, these questions should be discussed among the participants. But we do not believe it would be appropriate or helpful for the Commission to attempt to force participants to make such arrangements, which should be strictly voluntary and arise from the particular circumstances and dynamics of each case.

The final rule establishing alternative procedures for hydropower applications is neutral in regard to its impact on potential rival applicants for hydropower facilities, such as an applicant seeking to renew its license for such facilities and a municipal competitor seeking a license for the same facilities. No applicant in a competitive proceeding has asked the Commission to use the alternative procedures. However, nothing in the final rule precludes granting such a request. If it is made, we will consider whether it should be granted, considering all the relevant factors presented.

We are changing the language of § 4.34(i)(2)(iii) to state that the applicant or its contractor or consultant will only prepare a preliminary draft EA or a preliminary draft EIS, which after filing (with the related application) will be subject to complete review, revision and issuance for comment by the Commission.

Finally, we are adding a § 4.34(i)(2)(v) to the rules, to make it clear that another objective of the alternative procedures is the orderly and expeditious review by the Commission of any agreement or offer of settlement filed to resolve issues raised by an application for hydropower license, amendment, or exemption. We hope that involvement of the Commission's staff, prior to the filing of an application and agreement or offer of settlement with the Commission, together with the preparation of preliminary draft NEPA documents during the pre-filing consultation process, will result in filings that the Commission can expeditiously review. These filings should include water quality certification under section 401 of the Clean Water Act, with any

[5] Comments of Penobscot Nation (Penobscots), U.S. Dept. of the Interior (Interior) at 4, 10.

[6] Hydropower Reform Coalition (HRC) Comments at 8–10.

[7] Comments of Holyoke Gas & Electric Dept. and the Northern California Power Agency.

[8] Comments of NMFS at 3.

[9] 33 U.S.C. 1341(a)(1).

applicable conditions, and (after filing of the application) a final decision by any land management agency under section 4(e) of the Federal Power Act (FPA),[10]/ with mandatory conditions, should be submitted to the Commission so that we can make a prompt decision on the license or exemption application.

C. Demonstration Required of Applicant

The NOPR proposed in § 4.34(i)(3)(i) to require that the applicant, in its request to the Commission for use of the alternative procedures, demonstrate that it had made a reasonable effort to contact all resource agencies, Indian tribes, citizens' groups and others affected by the hydropower proposal, and that a ''consensus'' exists that the use of alternative procedures is appropriate.

This proposed regulatory text generated the most controversy in the rulemaking. Commenters disagreed vigorously as to what ''consensus'' should mean, with some arguing that it should mean unanimous agreement by all concerned,[11]/ and others arguing that it should mean the preponderance of views, at least by the major participants in the process.[12]/ Some commenters have proposed elaborate voting schemes in this regard,[13]/ while others have claimed that certain entities, such as resource agencies, should have a veto power over use of the alternative procedures.[14]/ Some commenters have asked the Commission to specify in the rule exactly what the requester should include in its showing.[15]/

The term ''consensus'' in ordinary usage means ''general agreement'' or ''collective opinion: the judgment arrived at by most of those concerned.'' [16]/ That is how the Commission employs the term here. While unanimous views obviously reflect consensus, unanimity is not always essential to a fundamentally consensual approach in a multi-party situation. The final rule does not require the applicant, in the request for use of the alternative procedures, to show that everyone concerned supports the use of these procedures. The applicant need only show that the weight of opinions expressed make it reasonable to conclude that under the circumstances it appears that use of the alternative procedures will be productive. We do not require the applicant to make any formal showing, such as a signed agreement

We envision a series of interactions between the applicant and participants that goes beyond an exchange of letters. Such interactions could include teleconferences and meetings involving Commission staff to explore the alternative procedures. In some cases the applicant's showing may rely on a lack of objections raised in such meetings. This situation may arise at the outset of the pre-filing consultation process, when interested entities are unsure of how the alternative procedures may compare to those otherwise required under Commission regulations and are unaware of the relative benefits of the alternative. The Commission believes that in these situations it is worth allowing the applicant and participants to try the alternative process rather than closing the door on this option.

To protect the rights of all interested entities to be advised of the request for alternative procedures and to file comments on the request in order to make their views known directly to the Commission, the final rule specifies, as proposed in the NOPR, that in all cases the Commission will give public notice in the **Federal Register** of the filing by an applicant of a request to use alternative procedures. Comments may be filed in response to this notice, and the Commission will take them into account in deciding whether or not to grant the request. The decision on the request will be final and not subject to interlocutory rehearing or appeal.[17]

D. Required Steps to Follow

In § 4.34(i)(4), the NOPR set forth certain minimum steps that all alternative procedures should include as appropriate: (1) The initial information meeting; (2) the scoping of environmental issues; (3) the analysis of scientific studies and further scoping; and (4) the preparation of a preliminary draft NEPA document and related application. Participants would be free, under the communications protocol to be submitted with the request to use alternative procedures, to describe those steps in greater detail or to agree to steps in addition to those set forth in the proposed rule.

Some commenters objected to the statement that these steps would only be included ''as appropriate,'' and expressed their stongly held views that the steps were the minimum that should be required in any alternative procedure.[18] Others argued in general for more flexibility.[19] Some commenters wanted more requirements in the regulatory text, to make clear that the alternative process must include distribution by the applicant of an initial information package, that the initial information meeting should be open to the public, and that there should be cooperation between the applicant and interested persons on the determination of necessary studies and their design and scope.[20]

Commenters also requested that the Commission specify in detail in the regulations the deadlines that would apply during the alternative process.[21]

We have set forth in the final rule a list of the minimum steps we think should be a part of any alternative process, if it is to serve its objectives of expediting the completion of the administrative process, while at the same time being fair to all participants. The final rule adopted provides for the inclusion of three steps by combining the second and third steps (dealing with the scoping and study processes, as outlined above) that were proposed in the NOPR. We do not believe that the requirement that these three steps be included restricts the flexibility of the alternative process.

We do not, however, make the inclusion of these three steps mandatory in every alternative process, as there may be special circumstances where some of them are not possible or necessary.

The best example of such a case is if the alternative process begins after the applicant has already completed the first step in the standard pre-filing consultation process (the initial information meeting open to the public). The Commission will entertain requests to use the alternative process at any reasonable time, and they need not be submitted before the commencement of the standard pre-filing consultation process. In such a case, if the Commission grants the request, it would make no sense to require by rule that the applicant repeat a step that is the same as or substantially similar to a step it

[10] 16 U.S.C. 791a *et seq.*

[11] *E.g.,* Comments of HRC at 4–5, Interior at 3–4.

[12] *E.g.,* Comments of NHA at 4, 15–18, Alabama Power Co. and Georgia Power Co. at 3–5.

[13] *E.g.,* Comments of Public Generating Pool at 6–8.

[14] Comments of U.S. Dept. of Agriculture, Forest Service, at 2.

[15] Comments of NMFS at 5.

[16] Webster's Third New International Dictionary (1981), or use of a particular voting procedure, to memorialize the consensus on use of the procedures. We do not give any single interested entity a veto power over the applicant's use of alternative procedures.

[17] The Commission will place a copy of the decision (on the request to use alternative procedures) on the Commission Issuance Posting System (CIPS), so that it can readily be found by anyone interested.

[18] *E.g.,* Comments of Interior at 4, Forest Service at 3.

[19] NMFS Comments at 4–5.

[20] HRC Comments at 9–10, 13.

[21] *E.g.,* Comments of Forest Service at 4.

has already taken under the standard process. The Commission is sensitive to the concerns expressed in the comments and will not abridge procedures allowed in the alternative process in a way that would curtail notice to or participatory rights of any interested entity. We wish to be flexible and fair to all concerned.

We agree with the comments asking for changes in the regulatory text to clarify the basic requirements for the completion of these minimum steps in the alternative process. Accordingly, § 4.34(i)(4) of the final rule makes clear that the applicant must distribute an initial information package and conduct an initial information meeting open to the public, as required in the standard process, and that the approved procedures must include provisions for the cooperative scoping of environmental issues with all participants, including the selection and design of required scientific studies and any further scoping. Our goal is to promote as much candid communication as possible among the participants about the applicant's proposal, its resource impacts, and the proposals and views of the other participants.

We do not think it is necessary or appropriate to spell out, in greater detail in the regulations, deadlines for the alternative process. The establishment of these deadlines should be done cooperatively by the participants in a manner that fits the circumstances and needs of each case, with the guidance and support of Commission staff. We believe that the successful use of the alternative procedures is predicated on a climate of cooperation among the applicant and interested entities. Therefore we do not believe that the Commission should mandate by rule exactly how the alternative process may unfold in every case. To do so would unnecessarily repeat requirements in the standard pre-filing consultation process, which remains available for use in appropriate cases, and would undercut the flexibility and spirit of cooperation and open communiciation that lie at the heart of the alternative process.

E. Notice, Filings and Service Requirements

The NOPR proposed in § 4.34(i)(5) that the Commission would give public notice of the filing of the applicant's request to use the alternative procedures, inviting comment on the request. Proposed § 4.34(6)(i) would require the Commission and the applicant to give public notice of each of the four steps required in the alternative process under proposed § 4.34(i)(4). The applicant would be required to give notice of each of these stages to entities on a mailing list approved by the Commission. The proposal required the applicant to file with the Commission quarterly reports on the progress of the alternative process, pursuant to § 4.34(i)(6)(ii), and implied in § 4.34(i)(6)(iii) that the applicant would also have to file with the Commission the critical documents generated in the process, namely the initial information package, scoping documents, and the preliminary draft environmental review document.

Some commenters have urged the Commission to add language to the rule in order to make it clear how the Commission and the applicant would give notice.[22] A commenter urged that, in the case of an applicant seeking a new license, the applicant be required to give notice at the outset to (1) any entity that had contacted the Commission during the period of the previous license about the project in question and (2) published lists of citizens' groups that may have an interest.[23] The Commission was also asked to require that various filings made by the applicant in the course of the alternative process be served on all participants in the process.[24] Resource agencies requested that the Commission require the applicant, at the conclusion of the alternative process, to index its public file (which documents the pre-filing consultation and environmental review processes) and submit all of these documents, together with the index, to the Commission with its application.[25] Commenters also expressed concern that omission of Exhibit E would eliminate important information from the Commission's record.[26]

We agree that revisions should be made in the final rule about the requirements for notice, filings and service of documents. New § 4.34(i)(3)(iii) requires the applicant, when it files its request for alternative procedures with the Commission, to serve copies on all affected resource agencies and Indian tribes and all entities that have expressed an interest in the alternative process. As provided in § 4.34(i)(5), the Commission will give notice in the **Federal Register** of receipt of the request. We believe that these requirements, together with the rule's requirement that the applicant must have made reasonable efforts to contact interested entities prior to the filing of its request (see § 4.34(i)(3)(i)), will be sufficient to put the public on notice of the request. As discussed in section III.C above, the Commission will consider any comments received in determining whether to grant the request.

Section 4.34(6)(i) is also revised from the proposal to make clear that the Commission's public notice of each of the first two stages in the alternative process, described in § 4.34(i)(4), will appear in the **Federal Register**, and that the applicant's public notice of these stages is required to appear in local newspapers in the county or counties in which the project is located. Section 4.34(i)(6)(ii) is revised to make clear that reports to the Commission on the pre-filing consultation process are required only every six months, and that this requirement can be satisfied by the submission of documents already available, such as summaries or minutes of meetings held. This section also clarifies what critical documents in the process the applicant must file with the Commission and provides that copies of these documents must be served on each participant in the process that requests a copy.[27]

When the applicant files its application and preliminary draft environmental review document with the Commission, these filings, and such additional material as will be specified by the Commission in each case, will replace the Exhibit E material that is required in the standard process. We will not permit applicants to omit material necessary for the Commission's review in these filings.

We do not think it necessary to require the applicant to index all of the documents in its public file compiled during the alternative process and to submit those documents, together with the index, to the Commission with its application.[28] Any party to the proceeding before the Commission may file any material it wishes as part of its comments on the application, or the party may request that materials in the possession of the applicant be filed with the Commission. The Commission may order such filings if it believes they

[22] *E.g.*, Comments of Interior at 5.

[23] HRC Comments at 5–6.

[24] Comments of Interior at 6–7.

[25] Comments of Interior at 6–7 and Forest Service at 1.

[26] Comments of Interior at 7.

[27] Applicants should note that in order to have sufficient copies for internal distribution, the Commission requires the submission of an original and eight copies of all filings in hydropower matters. See 18 CFR 4.34(h). The final rule makes clear that this requirement applies to filings with the Commission that are made in the course of the alternative pre-filing process described in § 4.34(i). See § 4.34(i)(6)(ii).

[28] The final rule requires the applicant to maintain a public file of all relevant documents in the pre-filing consultation process. See § 4.34(i)(6)(iii).

would be in the public interest. See the final rule § 4.34(i)(6)(iv).

F. Requests for Scientific Studies

Under the proposed rule § 4.34(i)(6)(v), the procedures approved in the alternative process may require all participants in the process to submit during the pre-filing consultation period their requests for scientific studies by the applicant. The proposal also allowed requests for such studies to be filed with the Commission after the filing of the application for good cause, with an explanation of why it was not possible to request the study during the pre-filing period.

This proposal was controversial. Some commenters pointed out that it was too restrictive, and that any party should be able to file a request for scientific studies by the applicant after the filing of its application, so long as good cause is shown. The Commission was also asked to give examples of situations in which a party would be able to show good cause.[29] Other commenters wanted the rule to be tightened to eliminate in whole or in part the right of any party to request scientific studies after the filing of the application.[30]

We believe that an important result of the alternative process, and the greater participation and communication among participants it encourages, should be the amicable resolution among participants of disputes about necessary scientific studies during the pre-filing consultation period, not after the application is filed with the Commission. With improved communication among the participants and the availability of dispute resolution in the alternative process, we do not expect to receive frequent requests for additional studies after the filing of an application that is subject to the alternative process. We understand, however, that not all such disputes will be so resolved, and that some participants, even though they have participated actively and in good faith in the alternative process, may be unwilling thereby to waive their requests for certain studies, even if the other participants in the process do not think they are necessary. The alternative process does not require such a waiver. We hope that through the alternative process, with the assistance of Commission staff, participants will be able to resolve all important differences about a hydropower proposal, including disputes about necessary studies. If the participants cannot resolve such a dispute, even with the dispute resolution procedure discussed in the next section, a party may raise it to the Commission's attention after the filing of the application. In such a case, the Commission will rule on the request, either by separate order or when issuing a decision on the application.

The requirement of good cause is self-explanatory, and the Commission does not wish to bind by rule the discretion of future Commissions to do justice in a particular case. We will not, therefore, encumber the final rule or include in this preamble additional language that would attempt to explain what would suffice to make a showing of good cause in a particular case.

G. Dispute Resolution

The proposed rule was silent on whether the Commission's provisions for dispute resolution, available in the standard pre-filing consultation process, would apply to the alternative process. Commenters asked whether they could seek resolution of disputes by the Commission in the alternative process, should it be necessary.[31]

We believe that participants should be able to ask the Commission to resolve disputes arising during the alternative process, but only if they have first made reasonable efforts to resolve the disputes with other participants, using any mechanisms established by agreement among the participants and the help of Commission staff, where appropriate. Any such request should be served on all participants and must document what efforts have been made to resolve the dispute.

H. Collapse of Consensus

The NOPR asked the commenters to address what they thought should happen if the consensus that had appeared to exist when the Commission granted an applicant's request for alternative procedures subsequently collapsed.

Many commenters attempted to answer this question. Most seemed to recognize that in certain circumstances it would make no sense to continue with the alternative process,[32] and some asked the Commission to direct what should happen in such circumstances.[33]

Despite the best of intentions of the participants, it is possible in some instances for the consensus supporting the continued use of the alternative procedures to collapse. We do not mean by this loss of consensus a disagreement on what studies should be conducted or what mitigation or enhancement measures should be required in response to the applicant's proposal, or loss of confidence on the part of one participant or a few participants in the process. We believe that a consensus will collapse if the weight of opinion of the applicant and the other participants is that the process has become a waste of their valuable time and resources and that the public interest would be better served under the circumstances by the Commission's directing a completion of the pre-filing process and what further steps are required of the applicant. In such a situation an alternative pre-filing process directed by the Commission would be required in order to clarify what steps the applicant would have to take in the time remaining to file an acceptable application.

Accordingly, the final rule adds § 4.34(i)(7) to allow a participant (including the applicant), in the event that a consensus supporting the alternative process is lost, to file a request that the Commission direct what steps should be taken to complete the pre-filing consultation process.

I. Grandfather Provision

The NOPR asked what should be done about alternative processes already approved by the Commission, pursuant to case-by-case waivers of current regulatory requirements, if the Commission adopts a final rule establishing alternative procedures.

All commenters addressing this question felt that the rule should grandfather such already approved processes.

We agree and are adding § 4.34(i)(9) to the final rule to grandfather existing alternative processes. Steps already taken do not have to be repeated, and applicants are not required to act inconsistently with written agreements already reached by participants in such cases. Other provisions of the new rule, however, such as public file requirements or requirements to file materials with the Commission (consisting of an original and eight copies) and serve copies on other participants, that may be in addition to those already agreed to in cases where waivers have been granted, will apply to all such cases after the effective date of the final rule.

J. Miscellaneous

NHA asked the Commission to improve its public noticing of

[29] HRC Comments at 11–12, U.S. Environmental Protection Agency at 1, Washington Dept. of Fish and Wildlife at 3–4.

[30] Reply Comments of EEI at 4–6.

[31] Comments of Interior at 8.

[32] Comments of Duke Power Co. at 2–3, Pacific Gas & Electric Co. at 4; HRC Comments at 7, Reply Comments at 11–12. asked the Commission to direct what should happen in such circumstances.

[33] Comments of Forest Service at 4, Montana Power Co. at 6–7, EEI Reply Comments at 6.

hydropower applications, by including the licensee name and the name of the project in addition to the project number, and to use public libraries to facilitate notice to the public. NHA also asked the Commission to explain what the NOPR meant in stating that staff could participate in cases where there was no alternative process proposed and approved, pursuant to proposed § 4.34(i)(7).

Resource agencies were concerned about the impact of the alternative procedures on the Commission's obligations under NEPA, section 10(j) of the FPA and the Endangered Species Act (ESA).[34] Federal agencies were concerned about whether the alternative procedures would affect their participation as cooperating agencies for NEPA purposes.[35] A number of commenters asked the Commission to explain how the alternative pre-filing procedures would affect the Commission's conduct of the hearing process on the application when it is filed.[36]

Regarding notices concerning a hydropower project, the Commission agrees with NHA that all public notices of a hydropower application should include not only the project number but also the name of the licensee and the name of the project. Participants in the alternative process may agree to use public libraries to facilitate notice and to provide information to the public, in addition to complying with the notice and public file requirements contained in the final rule.

The final rule contains a provision at § 4.34(i)(8) making it clear that, at the Commission's discretion, its staff may participate not only in the pre-filing consultation process where alternative procedures are in use, but also in other cases where these procedures are not being used. The Commission may commit its staff, upon request and on a case-by-case basis, to limited participation in the pre-filing consultation process in connection with the preparation of any application for license, exemption, or license amendment. The goals of such participation may include exploring whether the participants in the process should consider the use of alternative procedures and, to the extent feasible and appropriate, assisting in the informal resolution of disputes and the combination of the pre-filing consultation process with the NEPA process and related processes, such as the grant of water quality certification under the Clean Water Act and the issuance of mandatory conditions pursuant to section 4(e) of the FPA.

In such cases, on request and at its discretion, the Commission may approve suitable modifications to the procedures otherwise applicable during the pre-filing and post-filing periods, similar to those made for alternative procedures set forth in the proposed rule. If the applicant subsequently requests and is granted permission to use alternative procedures, the Commission may direct how the applicant and interested entities may shift from the standard pre-filing consultation process to the alternative process.

The final rule does not affect the Commision's compliance with NEPA, section 10(j) of the FPA, or the ESA, nor does it in any way deprive a party of the right to contest issues before the Commission and obtain a decision on these issues based on the administrative record before the Commission. The Commission will review the application for adequacy, and if it is accepted for filing the Commission will invite interventions and set a deadline for the submission of final recommendations, prescriptions, mandatory conditions, and comments. Upon receipt of the application the Commission will not issue a notice inviting additional study requests, and the Commission will not issue a notice that the application is ready for environmental analysis, as would occur under the standard procedures. The Commission will review the preliminary draft NEPA document, prepared in the course of the pre-filing consultation period under the alternative procedures, and issue a draft NEPA document for comment. The Commission will take any steps required to examine contested issues and comply in its usual manner with statutory mandates applicable to the case, such as section 10(j) of the FPA and the ESA. The Commission will then issue the NEPA document in final form and an order on the application for license, exemption, or license amendment.

If an agreement or offer of settlement is filed in connection with an application that the Commission grants, the order will address the agreement or offer of settlement. If contested issues remain, as determined by the position of the parties and resource agencies before the Commission, the order will resolve the issues based on the administrative record before the Commission.

Finally, an agency, such as a federal land management agency with authority over the proposed project under FPA section 4(e) or a state agency with responsibility for issuing a certification for the project under the Clean Water Act, is free to participate fully in any alternative procedures under the final rule and subsequently to elect to be a cooperating agency with the Commission for NEPA purposes. The Commission will continue to enforce its policy, however, that such an agency cannot intervene as a party in the proceeding and at the same time be a cooperating agency for NEPA purposes. We believe that allowing an agency to pursue both of these roles simultaneously could raise concerns about compliance by the Commission with its *ex parte* rule.[37]

IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[38] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[39] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[40]

This final rule is procedural in nature. It proposes alternative procedures that participants to a hydroelectric licensing or exemption proceeding may wish to use. Thus, no environmental assessment or environmental impact statement is necessary for the requirements proposed in the rule.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[41] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations promulgated will not have a significant economic impact on a substantial number of small entities.

The procedures adopted herein are purely voluntary in nature, and are designed to reduce burdens on small entities (as well as large entities) rather

[34] 16 U.S.C. 1531–1544. Comments of Interior at 9 and NMFS at 4.

[35] Comments of Forest Service at 4, Interior at 10.

[36] Comments of NMFS at 3, Western Urban Water Coalition at 4, Public Generating Pool at 14–29, Sacramento Municipal Utility District at 18–36, and the City and County of Denver at 2–3.

[37] 18 CFR 385.2201.

[38] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), codified at 18 CFR Part 380.

[39] 18 CFR 380.4(a)(2)(ii).

[40] 18 CFR 380.4.

[41] 5 U.S.C. 601–612.

than to increase them. More fundamentally, the alternative process we are proposing herein is voluntary. The procedures constitute an alternative to the procedures currently prescribed in our regulations, and will not be available unless it is the consensus of the persons and entities interested in the proceeding, as discussed herein, to use the alternative procedures. Under this approach, each small entity will be able to evaluate for itself whether the alternative procedures are beneficial or burdensome, and oppose their adoption if they appeared to be more burdensome than beneficial. Under these circumstances, the economic impact of the proposed rule will be either neutral or beneficial to the small entities affected by it.

VI. Information Collection Requirements

The Office of Management and Budget (OMB) regulations require OMB to approve certain reporting and recordkeeping requirements (collections of information) imposed by agency rule.[42] OMB has reviewed the NOPR without comment. The final rule adopted herein will impose reporting burdens only on those applicants that voluntarily choose to use the alternate procedures. Respondents subject to the filing requirements of this final rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Final Rule will affect two existing data collections, FERC–500 and FERC–505. Most of the reporting burdens associated with preparing and filing an application for a hydropower license, exemption, or amendment to license are imposed by existing regulations.

Public Reporting Burden

The alternative procedures will only require minor additional filing requirements with the Commission. The other additional burdens of the alternative procedures, as compared to the standard procedures, do not involve filings with the Commission, but will consist of various outreach efforts of the applicant and related interactions with entities interested in its hydropower proposal. An applicant would presumably only incur such additional burdens if it believed that, in the long run, it would save on litigation and other costs incurred to pursue the standard procedures.

The Commission has made approximate estimates of the additional time that may be required of an applicant to comply with the alternative procedures, as compared with the standard procedures. It is difficult to be precise about such estimates, because the time required for one applicant could vary considerably from the time required for other applicants, depending upon the circumstances involved, including the complexity of the issues raised, the total number of participants in the pre-filing process, and how cooperatively those participants worked together. If the alternative procedures were successful and resulted, for example, in the filing of an agreement or offer of settlement with the Commission, the applicant may be able to save substantially more time by avoiding litigation than was invested in the alternative procedures. If an applicant requested and was allowed to use the alternative procedures, the main additional burden, with the estimated hours to comply with each, are estimated to be:

Process	Burden (hours of effort)
(1) Contact interested entities	80
(2) Prepare and submit request, including communications protocol	80
(3) Prepare and distribute scoping and hold related meetings	50
(4) Develop agenda and other documents, including minutes, for all meetings and prepare and distribute them (only additional time as compared to presently required meetings	600
(5) Prepare and publish public notices	24
(6) Prepare and submit semi-annual progress reports and make other required Commission filings	48
(7) Maintain a complete record of the pre-filing consultation proceedings that would be open to the public	250

It is estimated that to prepare and distribute the preliminary draft environmental review document would not take any more time than to prepare Exhibit E under the standard process. Therefore, the estimated additional burden of the tasks required of an applicant if it voluntarily undertakes the alternative process totals 1132 hours.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–500 ''Application for License for Water Projects with More than 5MW Capacity''; FERC–505 ''Application for Water Projects 5MW or Less Capacity''.

Action: Proposed Data Collections.

OMB Control No.: 1902–0058; 1902–0115.

Respondents: Businesses or other for profit.

Frequency of Responses: On Occasion.

Necessity of Information: There are approximately 1,021 hydropower licenses issued by the Commission that are currently outstanding. These licenses all expire at the completion of fixed terms, and at expiration the license holders may apply for a new licenses. Other applicants may apply for exemptions or original licenses to construct and operate new or existing hydropower projects.

The final rule authorizes a potential applicant for a license, exemption or certain major amendments to a license to file a request for alternative procedures if the applicant wants to use such procedures, as authorized by the rule. The rule also requires the filing of a communications protocol with the request for alternative procedures. The applicant will have to do a number of other things in the pre-filing consultation process, including distribution of an initial information package and conduct an initial public meeting, which are required under existing Commission regulations. The applicant, possibly with a contractor's assistance, would have to conduct the scoping of environmental issues; this is a new requirement, not now imposed on applicants, but which is related to currently required pre-filing consultation duties of the applicant and would substitute in part for the environmental review process traditionally done by the Commission after the filing of an application for hydropower license or for certain major license amendments.

The applicant would have to do studies of the resource impacts of its proposal, as it now must do under current Commission regulations governing the pre-filing consultation process. The applicant or the contractor would also have to prepare a preliminary draft NEPA document and submit additional information in lieu of what is now required as Exhibit E to a hydropower application. These two filing requirements—what is now required and what would be required under the regulations for the alternative procedures—are similar.

The applicant would have to file with the Commission semi-annual reports on

[42] 5 CFR 1320.11.

the progress of the pre-filing consultation process under the alternative procedures. No such reports are now required, although the filing of these reports under the alternative procedures avoids the requirement in the current regulations for the applicant to document the entire pre-filing consultation process when the application is filed. Under the alternative procedures the applicant would have to maintain a public file of the pre-filing process and to give various public notices during this process, while current regulations do not require maintenance of a public file containing all this information or the issuance of as many such notices during the pre-filing consultation period.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Hydropower Licensing will upon receipt of the application review it to determine the broad impact of the license application. Commission staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public. The Commission will take any steps required to examine contested issues and comply with statutory mandates applicable to the case. These reviews ensure that the Federal Power Act as amended by other statutory provisions is formally administered to ensure compliance by the licensee. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the hydroelectric industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. [Attention: Michael Miller, Division of Information Services Phone: (202) 208–1415, fax: (202) 273–0873, email: mmiller@ferc.fed.us]

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–3087, fax: (202) 395–7285]

Estimated Annual Burden (includes burden hours already approved for standard procedures):

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–500	6	6	853	5,120
FERC–505	10	10	182	1,818

Total Annual Hours for collections (Reporting + Recordkeeping, (if appropriate)) = 6,938.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Data collection	Annualized capital/start-up costs	Annualized costs (operations & maintenance)	Total annualized costs
FERC–500	$269,861	$0.00	$269,861.00
FERC–505	95,822	0.00	95,822.00
Total			365,683.00

VII. Effective Date

This rule is effective December 5, 1997. If OMB has not approved the information collection provisions at that time, the Commission will issue a notice delaying the effective date until OMB approval of the final rule.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends parts 4 and 375 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 continues to read as follows:

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

2. In § 4.34, the section heading is revised and a new paragraph (i) is added to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(i) *Alternative procedures.* (1) An applicant may submit to the Commission a request to approve the use of alternative procedures for pre-filing consultation and the filing and processing of an application for an original, new or subsequent hydropower license or exemption that is subject to § 4.38 or § 16.8 of this chapter, or for the amendment of a license that is subject to the provisions of § 4.38.

(2) The goal of such alternative procedures shall be to:

(i) Combine into a single process the pre-filing consultation process, the

environmental review process under the National Environmental Policy Act and administrative processes associated with the Clean Water Act and other statutes;

(ii) Facilitate greater participation by and improve communication among the potential applicant, resource agencies, Indian tribes, the public and Commission staff in a flexible pre-filing consultation process tailored to the circumstances of each case;

(iii) Allow for the preparation of a preliminary draft environmental assessment by an applicant or its contractor or consultant, or of a preliminary draft environmental impact statement by a contractor or consultant chosen by the Commission and funded by the applicant;

(iv) Promote cooperative efforts by the potential applicant and interested entities and encourage them to share information about resource impacts and mitigation and enhancement proposals and to narrow any areas of disagreement and reach agreement or settlement of the issues raised by the hydropower proposal; and

(v) Facilitate an orderly and expeditious review of an agreement or offer of settlement of an application for a hydropower license, exemption or amendment to a license.

(3) A potential hydropower applicant requesting the use of alternative procedures must:

(i) Demonstrate that a reasonable effort has been made to contact all resource agencies, Indian tribes, citizens' groups, and others affected by the applicant's proposal, and that a consensus exists that the use of alternative procedures is appropriate under the circumstances;

(ii) Submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing consultation process, including the Commission staff, may communicate with each other regarding the merits of the applicant's proposal and proposals and recommendations of interested entities; and

(iii) Serve a copy of the request on all affected resource agencies and Indian tribes and on all entities contacted by the applicant that have expressed an interest in the alternative pre-filing consultation process.

(4) As appropriate under the circumstances of the case, the alternative procedures should include provisions for:

(i) Distribution of an initial information package and conduct of an initial information meeting open to the public;

(ii) The cooperative scoping of environmental issues (including necessary scientific studies), the analysis of completed studies and any further scoping; and

(iii) The preparation of a preliminary draft environmental assessment or preliminary draft environmental impact statement and related application.

(5) The Commission will give public notice in the **Federal Register** inviting comment on the applicant's request to use alternative procedures. The Commission will consider any such comments in determining whether to grant or deny the applicant's request to use alternative procdures. Such a decision will not be subject to interlocutory rehearing or appeal.

(6) If the Commission accepts the use of alternative procedures, the following provisions will apply.

(i) To the extent feasible under the circumstances of the proceeding, the Commission will give notice in the **Federal Register** and the applicant will give notice, in a local newspaper of general circulation in the county or counties in which the project is located, of the initial information meeting and the scoping of environmental issues. The applicant will also send notice of these stages to a mailing list approved by the Commission.

(ii) Every six months, the applicant shall file with the Commission a report summarizing the progress made in the pre-filing consultation process and referencing the applicant's public file, where additional information on that process can be obtained. Summaries or minutes of meetings held in the process may be used to satisfy this filing requirement. The applicant must also file with the Commission a copy of its initial information package, each scoping document, and the preliminary draft environmental review document. All filings with the Commission under this section must include the number of copies required by paragraph (h) of this section, and the applicant shall send a copy of these filings to each participant that requests a copy.

(iii) At a suitable location, the applicant will maintain a public file of all relevant documents, including scientific studies, correspondence, and minutes or summaries of meetings, compiled during the pre-filing consultation process. The Commission will maintain a public file of the applicant's initial information package, scoping documents, periodic reports on the pre-filing consultation process, and the preliminary draft environmental review document.

(iv) An applicant authorized to use alternative procedures may substitute a preliminary draft environmental review document and additional material specified by the Commission instead of Exhibit E to its application and need not supply additional documention of the pre-filing consultation process. The applicant will file with the Commission the results of any studies conducted or other documentation as directed by the Commission, either on its own motion or in response to a motion by a party to the licensing or exemption proceeding.

(v) Pursuant to the procedures approved, the participants will set reasonable deadlines requiring all resource agencies, Indian tribes, citizens' groups, and interested persons to submit to the applicant requests for scientific studies during the pre-filing consultation process, and additional requests for studies may be made to the Commission after the filing of the application only for good cause shown.

(vi) During the pre-filing process the Commission may require the filing of preliminary fish and wildlife recommendations, prescriptions, mandatory conditions, and comments, to be submitted in final form after the filing of the application; no notice that the application is ready for environmental analysis need be given by the Commission after the filing of an application pursuant to these procedures.

(vii) Any potential applicant, resource agency, Indian tribe, citizens' group, or other entity participating in the alternative pre-filing consultation process may file a request with the Commission to resolve a dispute concerning the alternative process (including a dispute over required studies), but only after reasonable efforts have been made to resolve the dispute with other participants in the process. No such request shall be accepted for filing unless the entity submitting it certifies that it has been served on all other participants. The request must document what efforts have been made to resolve the dispute.

(7) If the potential applicant or any resource agency, Indian tribe, citizens' group, or other entity participating in the alternative pre-filing consultation process can show that it has cooperated in the process but a consensus supporting the use of the process no longer exists and that continued use of the alternative process will not be productive, the participant may petition the Commission for an order directing the use by the potential applicant of appropriate procedures to complete its application. No such request shall be accepted for filing unless the entity submitting it certifies that it has been served on all other participants. The

request must recommend specific procedures that are appropriate under the circumstances.

(8) The Commission may participate in the pre-filing consultation process and assist in the integration of this process and the environmental review process in any case, including appropriate cases where the applicant, contractor, or consultant funded by the applicant is not preparing a preliminary draft environmental assessment or preliminary draft environmental impact statement, but where staff assistance is available and could expedite the proceeding.

(9) In all cases where the Commission has approved the use of alternative pre-filing consultation procedures prior to December 5, 1997, during the pre-filing process the potential applicant need not follow any additional requirements imposed by paragraph (i) of this section, if in so doing the applicant would repeat any steps already taken in the preparation of its application and supporting documentation or act inconsistently with any written agreement signed before December 5, 1997 by the applicant and the other participants in the alternative process.

PART 375—THE COMMISSION

3. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

4. In § 375.314, paragraph (u) is added to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(u) Approve, on a case-specific basis, and issue such orders as may be necessary in connection with the use of alternative procedures, under § 4.34(i) of this chapter, for the development of an application for an original, new or subsequent license, exemption, or license amendment subject to the pre-filing consultation process, and assist in the pre-filing consultation and related processes.

Note: The appendix will not appear in the Code of Federal Regulations.

Appendix A

Comments

Citizens' Groups

Adirondack Mountain Club
American Rivers
Appalachian Mountain Club
California Hydropower Reform Coalition
Conservation Law Foundation
Hydropower Reform Coalition
Idaho Rivers United
Michigan Hydro Relicensing Coalition
New England FLOW
New York Rivers United
Trout Unlimited

Federal Agencies

U.S. Department of Agriculture, U.S. Forest Service
U.S. Department of Commerce, National Marine Fisheries Service
U.S. Department of the Interior
U.S. Environmental Protection Agency

Indian Tribes

Penobscot Nation

Industry Associations

American Public Power Association
Edison Electric Institute
National Hydropower Association
Public Generating Pool
Western Urban Water Coalition

State Agencies

Georgia Department of Natural Resources
New York State Department of Environmental Conservation
Washington Department of Fish and Game

Licensees

Adirondack Hydro Development Corporation
Alabama Power Company and Georgia Power Company
Denver Water
Duke Power Company
Holyoke Gas & Electric Company and Northern California Water Power Agency
Minnesota Power & Light Company
Montana Power Company
Pacific Gas and Electric Company
Portland General Electric Company
Sacramento Municipal Utility District
Seattle City Light

Reply Comments

Alabama Power Company and Georgia Power Company
City of Holyoke, Massachusetts Gas & Electric Department
Duke Power Company
Edison Electric Institute
Hydropower Reform Coalition
National Hydropower Association
Sacramento Municipal Utility District

[FR Doc. 97–29196 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE05

Definition of United States (U.S.) Resident; Religious Record of Birth or Baptism as Evidence of Citizenship; Plan to Help Blind and Disabled Individuals Achieve Self-Support

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations clarify SSA's policies on the definition of a U.S. resident and the acceptable types of evidence for proving status as a U.S. citizen or national. They clarify that, for purposes of the Supplemental Security Income (SSI) program, *resident of the U.S.* means the individual has established an actual dwelling place in the U.S. and plans to continue living in the U.S. These final regulations also clarify that, for purposes of the SSI program, a religious record of a birth or baptism in the U.S. must have been recorded in the U.S. within 3 months of the birth, in addition to showing that the individual was born in the U.S., in order to be acceptable evidence that the individual is a U.S. citizen or a national of the U.S. In addition, these final regulations correct a typographical error in the wording regarding income that is used or set aside to be used under a plan to become self-supporting.

EFFECTIVE DATE: These regulations are effective December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

To be eligible for SSI benefits, an individual must be a resident of the U.S. (one of the 50 States, the District of Columbia, or the Northern Mariana Islands). Generally, a person becomes a resident when he or she arrives in the U.S., establishes an actual dwelling place in the U.S., and plans to continue living in the U.S.

Our regulation at § 416.1603(b) currently defines *resident of the U.S.* as ''a person who is living within the geographical limits of the United States.'' This definition is vague because it could be read to imply that mere presence, such as that of a visitor, is sufficient to establish residency. In addition, it does not fully support the evidence of residency documents required to establish U.S. residency listed in § 416.1603(a).

Section 416.1603(b) of these final regulations specifies that an individual must establish an actual dwelling place in the U.S. and intend to continue living in the U.S. to be considered a U.S. resident. Clarification of this section of the regulations is necessary to address problems that have arisen where individuals have established U.S.

residency under current regulations, but do not intend to live in the U.S.

In evaluating evidence of residency for SSI purposes, the term *actual dwelling place* will encompass different types of living situations including the situation of a homeless individual.

Another requirement for eligibility for SSI benefits is that an individual must be either a citizen or national of the U.S. or a qualified alien as defined in 8 U.S.C. 1641(b) who meets one of the exceptions in 8 U.S.C. 1612(a)(2). Section 416.1610 of the regulations lists the various types of evidence that an individual can submit as proof that he or she is a citizen or national. Among the acceptable types of evidence for a U.S. citizen or national is a religious record of birth or baptism which shows the individual was born in the U.S. However, § 416.1610(a)(2) currently does not specify that the place of recordation must be in the U.S., nor does it set any time limits on when the record must have been established.

Prior SSA studies have shown that religious records of birth or baptism recorded in the U.S. within 3 months of birth are generally reliable. Records made after 3 months of birth are more prone to fraud. While not a foolproof fraud deterrent, these final regulations will help to limit fraud by lessening the chance of an individual later coming into the U.S. and using a fraudulent religious record of birth or baptism to obtain SSI benefits.

Explanation of Revisions

In these final regulations, we are revising § 416.1603(b) to define precisely what we mean by ''living within the geographical limits of the United States'' and to reflect the evidence required by § 416.1603(a). We are also revising § 416.1610(a)(2) to specify that, in addition to showing that the individual was born in the U.S., a religious record of birth or baptism must have been recorded in the U.S. within 3 months of birth.

In addition, we are correcting a typographical error in the wording of the second sentence in § 416.1180 concerning income that is used or set aside to be used under a plan to become self-supporting.

On April 22, 1996, we published proposed rules in the **Federal Register** at 61 FR 17609 and provided a 60-day period for interested individuals to comment. We received no comments. We are, therefore, publishing these final rules unchanged.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they only affect individuals who claim benefits under title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 27, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending subparts K and P of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat 154 (42 U.S.C. 1382 note).

2. Section 416.1180 is amended by revising the second sentence to read as follows:

§ 416.1180 General.

* * * If you are blind or disabled, we will pay you SSI benefits and will not count the part of your income that you use or set aside to use under a plan to become self-supporting. * * *

Subpart P—[Amended]

3. The authority citation for subpart P of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614(a)(1)(B) and (e), and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c(a)(1)(B) and (e), and 1383); 8 U.S.C. 1254a; sec. 502, Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note).

4. Section 416.1603 is amended by revising paragraph (b) to read as follows:

§ 416.1603 How to prove you are a resident of the United States.

* * * * *

(b) *What ''resident of the United States'' means.* We use the term *resident of the United States* to mean a person who has established an actual dwelling place within the geographical limits of the United States with the intent to continue to live in the United States.

* * * * *

3. Section 416.1610 is amended by revising paragraph (a)(2) to read as follows:

§ 416.1610 How to prove you are a citizen or a national of the United States.

(a) * * *

(2) A certified copy of a religious record of your birth or baptism, recorded in the United States within 3 months of your birth, which shows you were born in the United States;

* * * * *

[FR Doc. 97–29187 Filed 11–4–97; 8:45 am]

BILLING CODE 4190–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD–FRL–5903–5]

RIN 2060–AF71

Ambient Air Quality Surveillance for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Lead air pollution levels measured near the Nation's roadways have decreased 97 percent between 1976 and 1995 with the elimination of lead in gasoline used by on-road mobile sources. Because of this historic decrease, EPA is shifting its ambient air monitoring focus from measuring lead air pollutant concentrations emanating from mobile source emissions toward a focus on stationary point sources of lead

air pollution. Today's action revises the part 58 lead air monitoring regulations to allow many lead monitoring stations to be discontinued while maintaining a core lead monitoring network in urban areas to track continued compliance with the lead National Ambient Air Quality Standard (NAAQS). This action also requires lead ambient air monitoring around lead stationary sources. This action is being taken at the direct request of numerous State and local agencies whose on-road mobile source-oriented lead monitors have been reporting peak lead air pollution values that are many times less than the quarterly lead NAAQS of 1.5 $\mu g/m^3$ for many years. Approximately 70 of the National Air Monitoring Stations (NAMS) and a number of the State and Local Air Monitoring Stations (SLAMS) could be discontinued with this action, thus making more resources available to those State and local agencies to deploy lead air quality monitors around heretofore unmonitored lead stationary sources.

DATES: The effective date of this rule is December 22, 1997 unless adverse or critical comments are received by December 5, 1997. If adverse or critical comments are received by December 5, 1997, and the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air Docket (LE–131), US Environmental Protection Agency, Attn: Docket No. A–91–22, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Brenda Millar, Emissions, Monitoring, and Analysis Division (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541–4036, e-mail: millar, brenda@email.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

Sections 110, 301(a), and 319 of the Clean Air Act as amended 42 U.S.C. 7410, 7601(a), 7619.

II. Background

The current ambient air monitoring regulations that pertain to lead air sampling were written in the 1970's when lead emissions from on-road mobile sources (e.g., automobiles, trucks) were the predominant lead air emission source affecting our communities. As such, the current lead monitoring requirements focus primarily upon the idea of determining the air quality impacts from major roadways and urban traffic arterial highways. Since the 1970's, lead has been removed from gasoline sources for on-road vehicles (on-road vehicles now account for less than 1 percent of total lead emissions), and a 97 percent decrease in lead air pollution levels measured in our neighborhoods and near roadways has occurred nationwide. Because of this historic decrease, EPA is reducing its requirements for measuring lead air pollutant concentrations near major highways, and is focusing on stationary point sources and their impacts on neighboring populations.

The current lead air monitoring regulations require that each urbanized area with a population of 500,000 or more operate at least two lead NAMS, one of which must be a roadway-oriented site and the second must be a neighborhood site with nearby traffic arteries or other major roadways. There are approximately 85 NAMS in operation and reporting data for 1996. This action would reduce this NAMS requirement to include one NAMS site in one of the two largest Metropolitan Statistical Areas (MSA/CMSA) within each of the ten EPA Regions, and one NAMS population-oriented site in each populated area (either a MSA/CMSA, town, or county) where lead violations have been measured over the most recent 8 calendar quarters. This latter requirement is designed to provide information to citizens living in areas that have one or more lead stationary sources that are causing recent air quality violations.

At present, the MSA/CMSAs, cities, or counties that have one or more quarterly Pb NAAQS violations that would be subject to this requirement include:

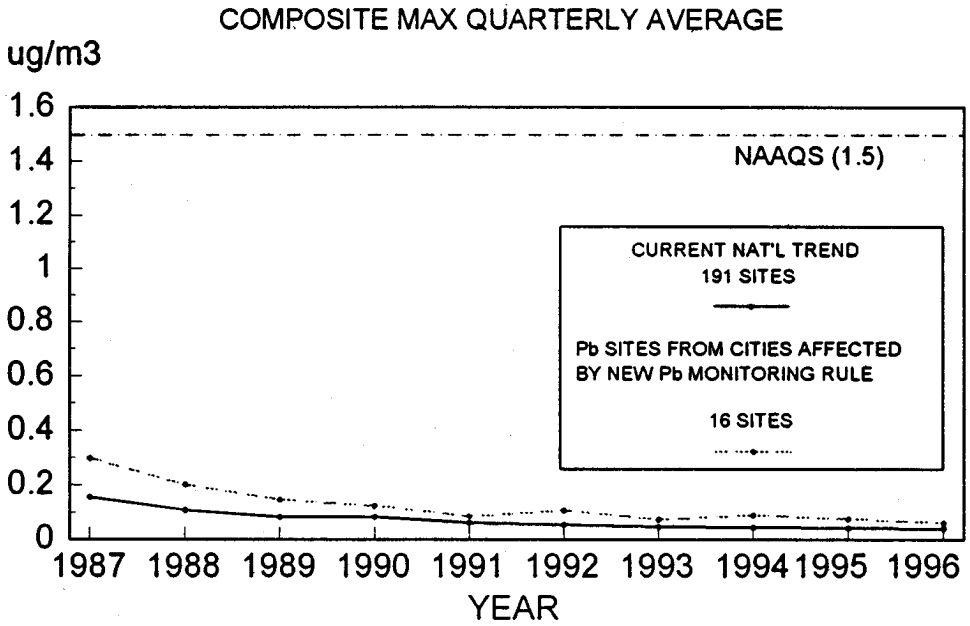
TABLE 1.—CMSA/MSA'S OR COUNTIES WITH ONE OR MORE LEAD NAAQS VIOLATIONS IN 1995–96

CMSA/MSA or county	Contributing lead source(s)
Philadelphia-Wilmington-Atlantic City CMSA.	Franklin Smelter in Philadelphia County, PA.
Tampa-St. Petersburg-Clearwater MSA.	Gulf Coast Lead in Hillsborough County, FL.
Memphis MSA	Refined Metals in Shelby County, TN.
Nashville MSA	General Smelting in Williamson County, TN.
St. Louis MSA	Chemetco in Madison County, IL, and Doe Run in Jefferson County, MO.
Cleveland-Akron CMSA.	Master Metals in Cuyahoga County, OH.
Iron County, MO	ASARCO in/near Hogan, MO.
Omaha MSA	ASARCO in Douglas County, NE.
Lewis and Clark County, MT.	ASARCO in/near East Helena, MT.

Data from these NAMS will be used to assess national trends in lead ambient air pollution. Figure 1 demonstrates the effect that these monitoring reductions will have on our national lead air pollutant trends.

BILLING CODE 6560–50–P

FIGURE 1. LEAD TRENDS: CURRENT U.S. VS SELECTED CITIES



BILLING CODE 6560–50–C

For other monitoring within the SLAMS network, EPA is requiring State and local agencies to focus their efforts toward establishing air monitoring networks around lead stationary sources which are causing or have a potential to cause exceedances of the quarterly lead NAAQS. Many of these sources have been identified through EPA's ongoing Lead NAAQS Attainment Strategy, and monitoring has already been established. In general, stationary sources emitting five or more tons per year are considered to be candidates for additional lead monitoring, although smaller stationary sources may also be problematic depending upon the facility's size and proximity to neighborhoods. EPA recommends a minimum of two sites per source, one located for stack emission impacts and the other for fugitive emission impacts. Variations of this two-site network are expected as source type, topography, locations of neighboring populations, and other factors play a role in how to most appropriately design such a network. EPA guidance for lead monitoring around point sources has been developed and is available through a variety of sources including the National Technical Information Service (703–487–4650), and electronic forms accessible through EPA's Office of Air Quality Planning & Standards Technology Transfer Network, Ambient Monitoring Technology Information Center (AMTIC) bulletin board system at http://ttnwww.rtpnc.epa.gov.

In addition to the changes to the lead monitoring requirements, EPA is making several minor changes to update and correct regulatory provisions to current practices. Specifically this affects sections 58.31, 58.34, 58.41, Appendix B, Appendix D sections 3.2 and 3.3, and Appendix G, sections 1 and 2b.

III. Administrative Requirements Section

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a ''significant regulatory action'' under the terms of the Executive Order 12866 and is therefore not subject to formal OMB review.

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. This action revises the part 58 air monitoring regulations for lead to allow many monitoring sites to be discontinued. The Office of Management and Budget (OMB) has previously approved the information collection requirements in the part 58 regulation under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0084 (EPA ICR No. 0940.13 and revised by 0940.14).

C. Impact on Small Entities

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entitites. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions whose jurisdictions are less than 50,000 people. This final rule will not have a significant impact on a substantial number of small entities because it does not impact small entities whose

jurisdictions cover less than 50,000 people. Pursuant to the provision of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

Since this modification is classified as minor, no additional reviews are required.

D. 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 standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the standard 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 standards. The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments. Therefore, the requirements of the Unfunded Mandates Act of 1995 do not apply to this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements.

Dated: October 30, 1997.

Carol W. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 58 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

2. Section 58.31(a) is revised to read as follows:

§ 58.31 NAMS network description.

* * * * *

(a) The AIRS site identification number for existing stations.

* * * * *

3. Section 58.34(a) is revised to read as follows:

§ 58.34 NAMS network completion.

* * * * *

(a) Each NAMS must be in operation, be sited in accordance with the criteria in Appendix E to this part, and be located as described in the AIRS database; and

* * * * *

4. Section 58.41(b) is revised to read as follows:

§ 58.41 PAMS network description.

* * * * *

(b) The AIRS site identification number for existing stations.

* * * * *

5. Appendix D is amended by revising the first sentence of paragraph 3 of section 1, revising section 2.7, revising the fifth paragraph of section 3, revising the last sentence of the first paragraph of section 3.2, revising the last sentence of the first paragraph of section 3.3, revising section 3.6, and revising references 6, 7, 10 of section 6 and adding reference 19 to section 6 to read as follows:

Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), and Photochemical Assessment Monitoring Stations (PAMS)

* * * * *

1. *SLAMS Monitoring Objectives and Spatial Scales*

* * * * *

It should be noted that this appendix contains no criteria for determining the total number of stations in SLAMS networks. * * *

* * * * *

2.7 *Lead (Pb) Design Criteria for SLAMS.* Presently, less than 1 percent of the Nation's Pb air pollution emissions originate from on-road mobile source exhaust. The majority of Pb emissions come from stationary point sources, such as metals processing facilities, waste disposal and recycling, and fuel combustion (reference 19 of this appendix). The SLAMS networks are used to assess the air quality impacts of stationary Pb sources, and to determine the broad population exposure from any Pb source. The most important spatial scales to effectively characterize the emissions from both mobile and stationary sources are the micro, middle, and neighborhood scales. For purposes of establishing monitoring stations to represent large homogeneous areas other than the above scales of representativeness, urban or regional scale stations may also be needed.

Microscale—This scale would typify areas in close proximity to stationary lead sources or downtown street canyons and traffic corridors where the general public would be exposed to maximum concentrations from mobile sources. Because of the very steep ambient Pb gradients resulting from Pb emissions from mobile sources (reference 7 of this appendix), the dimensions of the microscale for Pb generally would not extend beyond 15 meters from the roadway. Emissions from stationary sources such as primary and secondary lead smelters, and primary copper smelters may under fumigation conditions likewise result in high ground level concentrations at the microscale. In the latter case, the microscale would represent an area impacted by the plume with dimensions extending up to approximately 100 meters. Data collected at microscale stations provide information for evaluating and developing ''hot-spot'' control measures.

Middle Scale—This scale generally represents Pb air quality levels in areas up to several city blocks in size with dimensions on the order of approximately 100 meters to 500 meters. The middle scale may for example, include schools and playgrounds in center city areas which are close to major Pb stationary sources. Pb monitors in such areas are desirable because of the higher sensitivity of children to exposures of elevated Pb concentrations (reference 7 of this appendix). Emissions from point sources frequently impact on areas at which single sites may be located to measure concentrations representing middle spatial scales.

Neighborhood Scale—The neighborhood scale would characterize air quality conditions throughout some relatively uniform land use areas with dimensions in the 0.5 to 4.0 kilometer range. Stations of this scale would provide monitoring data in areas representing conditions where children live and play. Monitoring in such areas is important since this segment of the population is more susceptible to the effects of Pb. Where a neighborhood site is located away from immediate Pb sources, the site may be very useful in representing typical air quality values for a larger residential area, and therefore suitable for population exposure and trends analyses.

Urban Scale—Such stations would be used to present ambient Pb concentrations over an entire metropolitan area with dimensions in the 4 to 50 kilometer range. An urban scale station would be useful for assessing trends in citywide air quality and the effectiveness of larger scale air pollution control strategies.

Regional Scale—Measurements from these stations would characterize air quality levels

over areas having dimensions of 50 to hundreds of kilometers. This large scale of representativeness, rarely used in Pb monitoring, would be most applicable to sparsely populated areas and could provide information on background air quality and inter-regional pollutant transport.

Monitoring for ambient Pb levels is required for all major urbanized areas where Pb levels have been shown or are expected to be of significant concern due to the proximity of stationary Pb emissions sources. Sources emitting five tons per year or more of actual point and fugitive Pb emissions would generally be candidates for lead ambient air monitoring. Smaller sources could also pose a potential air quality problem in certain cases, e.g., if the facility is geographically compact and located very close to neighborhoods. Modeling may be needed to determine if a source has the potential to exceed the quarterly lead National Ambient Air Quality Standard (NAAQS). The total number and type of stations for SLAMS are not prescribed but must be determined on a case-by-case basis. As a minimum, there must be two stations in any area where Pb concentrations currently exceed or have exceeded 1.5 $\mu g/m^3$ quarterly arithmetic mean measured during any one quarter of the most recent eight quarters. Where the Pb air quality violations are widespread or the emissions density, topography, or population locations are complex and varied, there may be a need to establish more than two Pb ambient air monitoring stations. The EPA Regional Administrator may specify more than two monitoring stations if it is found that two stations are insufficient to adequately determine if the Pb standard is being attained and maintained. The Regional Administrator may also specify that stations be located in areas outside the boundaries of the urbanized areas.

Concerning the previously discussed required minimum of two stations, at least one of the stations must be a category (a) type station and the second may be either category (a) or (b) depending upon the extent of the stationary source's impact and the existence of residential neighborhoods surrounding the source. When the source is located in an area that is subject to NAMS requirements as in Section 3 of this Appendix, it is preferred that the NAMS site be used to describe the population's exposure and the second SLAMS site be used as a category (a) site. Both of these categories of stations are defined in section 3.

To locate monitoring stations, it will be necessary to obtain background information such as stationary and mobile source emissions inventories, climatological summaries, and local geographical characteristics. Such information should be used to identify areas that are most suitable to the particular monitoring objective and spatial scale of representativeness desired. References 9 & 10 of this appendix provide additional guidance on locating sites to meet specific urban area monitoring objectives and should be used in locating new stations or evaluating the adequacy of existing stations.

After locating each Pb station and, to the extent practicable, taking into consideration the collective impact of all Pb sources and surrounding physical characteristics of the siting area, a spatial scale of representativeness must be assigned to each station.

* * * * *

3. *Network Design for National Air Monitoring Stations (NAMS).*

* * * * *

For each urban area where NAMS are required, both categories of monitoring stations must be established. In the case of Pb and SO_2 if only one NAMS is needed, then category (a) must be used. The analysis and interpretation of data from NAMS should consider the distinction between these types of stations as appropriate.

* * * * *

3.2 *Sulfur Dioxide Design Criteria for NAMS* * * *

The actual number and location of the NAMS must be determined by EPA Regional Offices and the State Agency, subject to the approval of EPA Headquarters, Office of Air Quality Planning and Standards (OAQPS).

* * * * *

3.3 *Carbon Monoxide (CO) Design Criteria for NAMS* * * *

At the national level, EPA will not routinely require data from as many stations as are required for PM–10, and perhaps SO_2, since CO trend stations are principally needed to assess the overall air quality progress resulting from the emission controls required by the Federal motor vehicle control program (FMVCP) and other local controls.

* * * * *

3.6 *Lead (Pb) Design Criteria for NAMS.* In order to achieve the national monitoring objective, one NAMS site must be located in one of the two cities with the greatest population in the following ten regions of the country (the choice of which of the two metropolitan areas should have the lead NAMS requirement is made by the Administrator or the Administrator's designee using the recommendation of the Regional Administrators or the Regional Administrators' designee):

EPA REGIONS & TWO CURRENT LARGEST MSA/CMSAS (USING 1995 CENSUS DATA)

Region (States)	Two largest MSA/CMSAs
I (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont).	Boston-Worcester-Lawrence CMSA, Hartford, CT MSA
II (New Jersey, New York, Puerto Rico, U.S. Virgin Islands)	New York-Northern New Jersey-Long Island, CMSA, San Juan-Caguas-Arecibo, PR CMSA.
III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Washington, D.C.).	Washington-Baltimore CMSA, Philadelphia-Wilmington-Atlantic City CMSA.
IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee).	Miami-Fort Lauderdale CMSA, Atlanta, GA MSA.
V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)	Chicago-Gary-Kenosha CMSA, Detroit-Ann Arbor-Flint CMSA.
VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)	Dallas-Fort Worth CMSA, Houston-Galveston-Brazoria CMSA.
VII (Iowa, Kansas, Missouri, Nebraska)	St. Louis MSA, Kansas City MSA
VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)	Denver-Boulder-Greeley CMSA, Salt Lake City-Ogden MSA.
IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada)	Los Angeles-Riverside-Orange County CMSA, San Francisco-Oakland-San Jose CMSA.
X (Alaska, Idaho, Oregon, Washington)	Seattle-Tacoma-Bremerton CMSA, Portland-Salem CMSA.

In addition, one NAMS site must be located in each of the MSA/CMSAs where one or more violations of the quarterly Pb NAAQS have been recorded over the previous eight quarters. If a violation of the quarterly Pb NAAQS is measured at a monitoring site outside of a MSA/CMSA, one NAMS site must be located within the county in a populated area, apart from the Pb source, to assess area wide Pb air pollution levels. These NAMS sites should represent the maximum Pb concentrations measured within the MSA/CMSA, city, or county that is not directly impacted from a single stationary Pb source. This site may be a microscale or middle scale category (a) station, located adjacent to a major roadway (e.g., >30,000 ADT), or a neighborhood scale category (b) station that is located in a highly populated residential section of the MSA/CMSA or county where the traffic density is high. Data from these sites will be used to assess general conditions for large MSA/CMSAs and other populated areas as a marker for national trends, and to confirm continued attainment of the Pb NAAQS. In some cases, the MSA/CMSA subject to the latter lead NAMS requirement due to a violating stationary source will be the same MSA/CMSA subject to the lead NAMS requirement based upon its population. For

these situations, the total minimum number of required lead NAMS is one.

* * * * *

6. *References.*

* * * * *

6. Lead Guideline Document, U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–452/R–93–009.

7. Air Quality Criteria for Lead. Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC. EPA–600/8–83–028 aF—dF, 1986, and supplements EPA–600/8–89/049F, August 1990. (NTIS document numbers PB87–142378 and PB91–138420.)

* * * * *

10. ''Guidance for Conducting Ambient Air Monitoring for Lead Around Point Sources,'' Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC EPA–454/R–92–009, May 1997.

* * * * *

19. National Air Pollutant Emissions Trends, 1900–1995, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–454/R96–007, October 1996, updated annually.

* * * * *

6. Appendix E is amended by revising the first paragraph of section 7.1, adding a sentence at the beginning of section 7.3, revising section 7.4, and revising reference 18 in section 13 to read as follows:

Appendix E—Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring

* * * * *

7.1 *Vertical Placement.* Optimal placement of the sampler inlet for Pb monitoring should be at breathing height level. However, practical factors such as prevention of vandalism, security, and safety precautions must also be considered when siting a Pb monitor. Given these considerations, the sampler inlet for microscale Pb monitors must be 2–7 meters above ground level. The lower limit was based on a compromise between ease of servicing the sampler and the desire to avoid unrepresentative conditions due to re-entrainment from dusty surfaces. The upper limit represents a compromise between the desire to have measurements which are most representative of population exposures and a consideration of the practical factors noted above.

* * * * *

7.3. *Spacing from Roadways.* This criteria applies only to those Pb sites designed to assess lead concentrations from mobile sources. Numerous studies have shown that ambient Pb levels near mobile sources are a function of the traffic volume and are most pronounced at ADT >30,000 within the first 15 meters on the downwind side of the roadways. * * *

7.4. *Spacing from trees and other considerations.* Trees can provide surfaces for deposition or adsorption of Pb particles and obstruct normal wind flow patterns. For microscale and middle scale category (a) sites there must not be any tree(s) between the source of the Pb and the sampler. For neighborhood scale category (b) sites, the sampler should be at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than the height that the tree protrudes above the sampler.

* * * * *

13. *References.*

* * * * *

18. Air Quality Criteria for Lead. Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC EPA–600/8–83–028 aF–dF, 1986, and supplements EPA–600/8–89/049F, August 1990. (NTIS document numbers PB87–142378 and PB91–138420.)

* * * * *

7. Section 1 and section 2b of Appendix G are revised to read as follows:

Appendix G—Uniform Air Quality Index and Daily Reporting

* * * * *

1. *General.* This appendix describes the uniform air quality index to be used by States in reporting the daily air quality index required by § 58.50.

2. *Definitions.*

* * * * *

b. Reporting Agency means the applicable State agency or a local air pollution control agency designated by the State, that will carry out the provisions of § 58.50.

* * * * *

[FR Doc. 97–29294 Filed 11–4–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[BPD–875–NC]

Medicare Program; Home Health Agency Physician Certification Regulations

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

ACTION: Decision to reexamine interpretations, with comment.

SUMMARY: This document with comment period announces our decision to reexamine our recent interpretations of the Medicare regulations pertaining to indirect compensation arrangements between home health agencies (HHAs) and physicians who certify or recertify the need for home health services or establish or review the home health plan of care. We are withdrawing recent interpretations regarding indirect compensation arrangements where the physicians are salaried employees of, or have a contractual arrangement to provide services for, an entity that also owns the HHA. This will enable us to evaluate our recent interpretations of these regulations and related provisions of section 1877 of the Social Security Act to ensure consistent application of Medicare policy among providers of services.

DATES: *Effective Date:* This document is effective on December 5, 1997.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on January 5, 1998.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–875–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

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

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

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–875–NC. 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).

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as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jennifer Carter, (410) 786–4615.

SUPPLEMENTARY INFORMATION:

I. Background

Section 903 of the Omnibus Reconciliation Act of 1980 amended sections 1814(a) and 1835(a) of the Social Security Act (the Act) to prohibit the certification of need for home healthy services under Medicare, and the establishment and review of a home health plan of care for those services, by a physician who has a significant interest in, or a significant contractual or significant financial relationship with, the HHA that provides those services. These amendments were incorporated into the regulations at 42 CFR 405.1633(d) (which was redesignated as § 424.22(d)), by an interim final rule with comment period that was published in the **Federal Register** on October 26, 1982 (47 FR 47388), and was made effective on November 26, 1992.

On June 30, 1986, we published a final rule in the **Federal Register** (51 FR 23541) that confirmed the provisions of the October 1982 rule, and clarified that under the term, ''significant interest or a significant financial or contractual relationship'' with the HHA, we intended to include salaried employment. This clarification was made effective on August 29, 1986.

The only exceptions to the home health regulations were uncompensated officers or directors of an HHA, HHAs operated by Federal, State, or local governmental authority, and sole community HHAs. The home health physician certification restrictions of sections 1814(a) and 1835(a) of the Act and § 424.22(d) of the regulations have not been revised or updated since 1986.

On December 19, 1989, section 6204 of the Omnibus Budget Reconciliation Act of 1989 added section 1877, ''Limitation on Certain Physician Referrals,'' to the Act. In general, section 1877 of the Act prohibits a physician who has a financial relationship with an entity that furnishes clinical laboratory services (or a physician with an immediate family member who had such a relationship) from making referrals to the entity for clinical laboratory services for which Medicare may otherwise pay.

On August 10, 1993, section 13562 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) revised section 1877 of the Act to cover 10 additional designated health services, including home health services, beginning with referrals made after December 31, 1994. The statute was also revised to provide for certain exceptions to the prohibition, including a bona fide employment exception subject to certain conditions. Additionally, referrals are defined in part to include the request or establishment of a plan of care by a physician which includes the provision of a plan of care by a physician which includes the provision of a designated health service. On August 14, 1995, we published a final rule with comment in the **Federal Register** (60 FR 41914) to implement the amendments of OBRA '93 that apply to referrals for clinical laboratory services and which were effective retroactively to January 1, 1992. In this final rule we indicated our intention to rely on the language and interpretations of the final rule when reviewing referrals in appropriate cases for the 10 designated health services. Appropriate cases were defined as those in which our interpretation of the statute clearly applied equally to clinical laboratory services and other designated health services. We are currently developing a proposed rule to implement the provisions of section 1877 of the Act which were effective January 1, 1995, and relate to the additional designated health services.

It is our intention to reconcile the statutory prohibitions in sections 1814(a) and 1835(a) of the Act concerning physician certification of home health services with the related section 1877 prohibitions as part of the proposed regulations implementing the OBR '93 changes to section 1877. This proposed regulation is in the final stages of development and should be published in the very near future.

In the meantime, we have received numerous inquiries about the applicability of the current home health prohibitions at § 424.22 regarding hospital-employed physicians certifying and recertifying the need for home health services provided by the hospital-owned HHA. We recently released an interpretation of § 424.22(d)(3)(ii) and indirect compensation in the case where a physician is employed by the hospital that also owns the HHA. In that interpretation of § 424.22, we stated that hospital-employed physicians are prohibited from certifying or recertifying the need for home health services for the hospital-owned HHA. Furthermore, we stated that if the HHA is separately incorporated and not included on the hospital's cost report, the hospital-employed physicians are permitted to certify or recertify the need for home health services for the hospital-owned HHA. We also released an interpretation that indicated that payment of compensation to a physician by the HHA's parent or related organization would very likely be considered to be paid by the HHA.

As we begin to reconcile the home health prohibitions with the section 1877 prohibitions, we have concluded that our recent interpretations of this regulation have brought about unintended consequences affecting rural areas, integrated delivery systems, and current medical practice and may be inconsistent with the provisions of section 1877. Therefore, we are going to address ''indirect compensation'' and the relationship between the HHA regulations and the section 1877 provisions in the separate proposed rule that is in the final stages of development and should be published in the very near future. We will address the scope of an indirect compensation arrangement where the physicians are salaried employees of, or have a contractual arrangement to provide services for, the entity that owns the HHA in that proposed regulation. In the meantime, we withdraw these recent interpretations concerning indirect compensation under § 424.22(d).

II. Purpose of This Notice

We have decided to reexamine appropriate provisions of section 1877 of the Act and the home health regulations as they pertain to indirect compensation arrangements between physicians and home health agencies. We are concerned with the situation in which the physician receives compensation from the same entity that also owns the home health agency. Pending that evaluation, we have decided to withdraw recent interpretations of § 424.22(d)(3)(ii) as it applies to certification and recertification or establishment and review of plans of care by physicians who are salaried employees of, or have a contractual arrangement to provide services for, an entity that also owns the HHA. Instead, we will address the issue of indirect compensation, applicable to the health services specified in section 1877 of the Act, in the proposed rule that is in the final stages of development and should be published in the **Federal Register** in the very near future. In the meantime, we withdraw these recent interpretations concerning indirect compensation under 424.22(d).

We remain concerned about inappropriate physician certification for home health services. However, we are also concerned about the effect that the recent interpretations of the home

health regulation at § 424.22(d)(3)(ii), as it applies to indirect salaried employment or contractual arrangements, may have on rural areas where the hospital or other entity is so pervasive a presence in the community that, in addition to owning the home health agency, it also employs the majority of the physicians.

We have asked the Medicare fiscal intermediaries to cooperate with the Office of Inspector General to look into the referral patterns of hospitals that own facilities providing ancillary services, including home health services.

III. Other Required Information

A. Executive Order 12866 Review

In accordance with provisions of Executive Order 12866, this notice with comment period was received by the Office of Management and Budget.

B. Collection of Information Requirements

This notice with comment period does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. 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 notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

(Authority: Secs. 1102, 1814(a), 1835(a), 1871, and 1877 of the Social Security Act (42 U.S.C. 1302, 1395f(a), 1395(a), 1395hh, and 1395nn))

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospitals Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 17, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: October 23, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–29071 Filed 11–4–97; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1860

[WO–350–1220–00–24 1A]

RIN 1004–AC–88

Patent Preparation and Issuance

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rule amends part 1860 of Title 43 of the Code of Federal Regulations (CFR) to completely remove subpart 1862, which contains internal instructions on preparing and issuing patents. The Bureau of Land Management (BLM) plans to place these procedures in an existing BLM Manual/Handbook, a more appropriate location than the CFR. The public will have access to the material.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Vanessa Engle, Lands and Realty Group, Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240; Telephone (202) 452–7776 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Discussion of Final Rule
IV. Procedural Matters

I. Background

The existing regulation at 43 CFR part 1862 has no requirements with which the public must comply. Instead, it contains internal instructions on preparing and issuing patents, which properly should be in manuals and handbooks. For this reason, BLM published a Notice of Proposed Rulemaking in the August 16, 1996, **Federal Register** (61 FR 42579), to advise the public of its plans to completely remove subpart 1862 from 43 CFR and place the material in the BLM Manual/Handbook. We invited public comments for 30 days and received comments from a mining association. We have considered the association's comments in preparing the final rule.

II. Response to Comments

The commenter opposed the proposed rule because it neither indicated where in BLM's policy manuals and handbooks the regulation would reside nor whether the instructions would remain the same or change.

Changes to the proposed rule, based on this comment, are not necessary. BLM will not make any substantive alterations to the instructions but will update them before they are placed in the existing BLM Manual/Handbook, which currently is being updated to ensure continuity of the subpart 1862 instructions. Under the heading of subpart 1862, the manual/handbook will go into considerable detail on the requirements for preparing and issuing patents. In addition to the information previously contained in subpart 1862, the manual will include sections on different types of patents, specific language to be included in patents, directions on how to correctly format and number patents and other particulars. BLM will not remove any of the requirements previously found in 43 CFR part 1862.

III. Discussion of Final Rule

This final rule completely removes Subpart 1862 of Title 43 CFR, which provides internal instructions on preparing and issuing patents. BLM is issuing the rule without change from the August 16, 1996, Notice of Proposed Rulemaking. This action meets one of the objectives of President Clinton's Government-wide regulatory reform initiative—to eliminate unnecessary regulations from the CFR.

IV. Procedural Matters

National Environmental Policy Act of 1969

BLM has prepared an environmental assessment (EA), and has found that the final rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 432(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record, 1620 L Street, NW, Room 401, Washington, DC, during regular business hours, 7:45 a.m. to 4:15 p.m. Monday through Friday.

Paperwork Reduction Act

This final rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501.

Regulatory Flexibility Act

BLM has determined that the final rule, which merely removes unnecessary regulations, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Unfunded Mandates Reform Act of 1995

This final rule does not include any Federal mandate that may result in increased expenditures of $100 million in any one year by State, local, or tribal governments, or by the private sector. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

Executive Order 12612

BLM has analyzed this final rule under the principles and criteria in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This final rule does not represent a government action that interferes with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be prepared under Executive Order 12630, ''Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12866

This final rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review.

Executive Order 12988

The Department has determined that this final rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Report to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, BLM submitted a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the General Accounting Office before publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Author: The principal author of this final rule is Frances Watson, Regulatory Affairs Group, Bureau of Land Management, 1849 C Street, NW, Room 401 LS, Washington, D.C. 20240; Telephone 202/452–5006 (Commercial or FTS).

List of Subjects in 43 CFR Part 1860

Administrative practice and procedure, Public lands.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 1860 of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1860—[AMENDED]

1. The authority citation for part 1860 continues to read as follows:

Authority: R.S. 2450, as amended; 43 U.S.C. 1161.

Subpart 1862—[Removed and Reserved]

2. Subpart 1862 is removed and reserved.

Dated: October 28, 1997.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–29273 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3710

[WO–320–4130–02–24 1A]

RIN 1004–AC39

Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations published in the **Federal Register** on Tuesday, July 16, 1996 (61 FR 37116). The regulations addressed the unlawful use and occupancy of unpatented mining claims for non-mining purposes.

DATES: The corrections are effective on November 5, 1997.

FOR FURTHER INFORMATION CONTACT: Richard E. Deery, (202) 452-0353.

SUPPLEMENTARY INFORMATION: On July 16, 1996, BLM published a final rule addressing the unlawful use and occupancy of unpatented mining claims for non-mining purposes. The definitions section of the final rule and its accompanying preamble contain the undefined phrases ''hardrock mining'' and ''hardrock mineral development.'' Another section of the final rule and its accompanying preamble contain an erroneous cross reference. BLM must clarify the undefined phrases and correct the cross-referencing errors to avoid confusing those people whose activities are subject to the regulations.

Final § 3715.0–5 defines the term ''mining laws'' to mean, in pertinent part, ''all laws that apply to *hardrock mining* on public lands and which make public lands available for *hardrock mineral development.* This includes, but is not limited to, the general authorities relating to *hardrock mining* or to the public lands on which this rule is based and case law which interprets those authorities.'' (Emphasis added.) Since the final rule became effective, BLM has learned from its field staff that use of the undefined terms, ''hardrock mining'' and ''hardrock mineral development'' in the definition of ''mining laws'' is causing confusion among some people whose activities are subject to the regulations. These people are arguing that BLM used these terms to exclude activities associated with mining of placer claims from the scope of these regulations. BLM does not agree with this position. Final § 3715.0–1 states in pertinent part that, ''The purpose of this subpart is to manage the use and occupancy of the public lands for the development of *locatable mineral deposits* by limiting such use or occupancy to that which is reasonably incident. (Emphasis added.) It is well settled that the framework for locating valuable mineral deposits set up by the mining laws applies to claims both to minerals in veins or lodes (hardrock) and to minerals in alluvial, glacial, or marine deposits (placer). See 30 U.S.C. 23 and 35 respectively. However, to alleviate any possible confusion, both now and in the future, BLM is removing the undefined ''hardrock'' phrases and replacing them with phrases incorporating the concept of locatable minerals. This action will ensure consistency between the purpose and definitions sections and eliminate any confusion over the scope of the regulations.

The final rule also contains a provision that describes the four kinds of enforcement actions BLM can take if an occupant of an unpatented mining

claim does not meet the requirements of the use and occupancy regulations. See 43 CFR 3715.7–1.

Paragraph (a)(2) of the cited section provides, in pertinent part, that BLM may order an immediate, temporary suspension of a use or occupancy if necessary to protect health, safety, or the environment. Paragraph (a)(2)(ii) specifies that failure to meet any of the standards in 43 CFR 3715.3–1(b) or 3715.5(b), (c), or (d) will result in a presumption that a risk to health, safety, or the environment exists and issuance of an immediate, temporary suspension. (Emphasis added.). See 61 FR 37129, third column. The reference to 43 CFR 3715.5(d) is incorrect. The reference should be to 43 CFR 3715.5(e). The preamble to final section 3715.7–1 contains the same error. See 61 FR 37123, third column, third paragraph.

The effect of this correction is to provide that if a permanent or temporary structure placed on public lands fails to conform with the applicable State or local building, fire, or electrical codes; occupational safety and health standards; or mine safety standards, BLM will presume that health, safety, or the environment is at risk and will order the user or occupant of the structure to immediately suspend use or occupancy.

Under the Administrative Procedure Act, an agency does not have to issue a notice of proposed rulemaking when the agency for good cause finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' See 5 U.S.C. 553(b). Because the amendments adopted today are technical corrections to clarify the applicability of the final rule, BLM finds that publishing the amendments for comment would be unnecessary. BLM adopted the rules being amended after notice and the opportunity for public comment. The proposed rule did not contain the cross-reference error. See proposed § 3715.6(b) (57 FR 41846, Sept. 11, 1992). The changes are responsive to concerns raised with BLM relating to ambiguity in the current language of the rules created by use of the undefined ''hardrock'' phrases and the erroneous cross reference. If BLM delayed making these changes so as to allow notice and the opportunity for comment, there is the danger of confusion regarding the applicability of regulations and the type of enforcement action BLM will take if a person fails to comply with State and local building, fire, and electrical codes; occupational safety and health standards; or mine safety standards for permanent and temporary structures placed on public lands.

Under the Administrative Procedure Act, an agency must publish a substantive rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause. See 5 U.S.C. 553(d). For the same reasons described above with respect to notice and opportunity for comment, BLM finds that there is good cause for having these correcting amendments become effective immediately on publication in the **Federal Register**.

List of Subjects in 43 CFR Part 3710

Administrative practice and procedure, Mines, Public lands-mineral resources.

Dated: October 28, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, BLM is correcting 43 CFR 3710 by making the following correcting amendments:

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3715—Use and Occupancy under the Mining Laws

1. The authority citation for subpart 3715 continues to read as follows:

Authority: 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; and 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732(b) and (c), 1733(a) and (g).

2. In § 3715.0–5, revise the definition of ''Mining laws'' to read as follows:

§ 3715.0–5 How are certain terms in this subpart defined?

* * * * *

Mining laws means all laws that apply to mining of locatable minerals on public lands and which make public lands available for development of locatable minerals. This includes, but is not limited to, the general authorities relating to mining of locatable minerals or to the public lands on which this subpart is based and case law which interprets those authorities.

* * * * *

3. In § 3715.7–1, revise paragraph (a)(2)(ii) to read as follows:

§ 3715.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?

(a) * * *

(2) * * *

(ii) You fail at any time to meet any of the standards in § 3715.3–1(b) or § 3715.5(b), (c), or (e).

* * * * *

[FR Doc. 97–29281 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186; FCC 97–384]

Assessment and Collection of Regulatory Fees for Fiscal Year 1997

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments. First, permittees, licensees or other entities subject to a regulatory fee and claiming an exemption from regulatory fees based upon its status as a nonprofit entity, shall make a one-time filing with the Secretary of the Commission written documentation establishing the basis for its exemption with 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director. Second, for-profit purchasers or assignees of licenses, stations or facilities previously owned by non-profit entities not subject to regulatory fees must notify the Secretary of the Commission of such purchase or reassignment within 60 days of the effective date of the purchase or assignment. Third, the Commission is requiring licensees of Commercial Mobile Radio Service (CMRS) stations to retain for two years, and submit to the Commission upon request, documentation used in calculating their fee payments. Finally, the Commission is delegating authority to the Managing Director to publish annually in the **Federal Register** lists of those commercial communications firms and businesses for commercial purposes that have paid a regulatory fee for the preceding fiscal year.

EFFECTIVE DATE: November 5, 1997.

ADDRESSES: Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey, Chief, Billings & Collections Branch, (202) 418–1995.

SUPPLEMENTARY INFORMATION:

1. In the *Further Notice of Proposed Rulemaking* in this proceeding, the Commission proposed to adopt several new procedures in order to more efficiently and equitably collect the annual regulatory fees required by

Section 9 of the Communications Act, 47 U.S.C. 159. See Further Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 62 FR 40036 (July 25, 1997)(*FNPRM*). We address below the comments filed in this proceeding and adopt the proposed new procedures with some modifications.[1]

2. Specifically, we adopt a requirement that non-profit entities claiming an exemption from regulatory fees make a one-time filing of documentation establishing their exempt status. We also adopt a requirement that for-profit purchasers or assignees of stations or facilities previously owned by non-profit entities notify the Commission of such reassignment or sale. Additionally, we adopt a requirement that licensees of Commercial Mobile Radio Services (CMRS) maintain, and submit upon request, documentation supporting the calculations of their fee payments. Finally, the amendments will authorize the Managing Director to publish annually in the **Federal Register** the names of all fee payers.

Documentation for Non-Profit Entities

3. Section 1.1162(c) of the Commission's Rules currently exempts from payment of regulatory fees those entities possessing non-profit status under section 501 of the Internal Revenue Code, 26 U.S.C. 501, or certification as a non-profit corporation or other non-profit entity by a state or other governmental authority. See 47 CFR 1.1162(c). The *FNPRM* proposed a one-time requirement that non-profit entities claiming exemptions from the regulatory fee requirement submit documentation establishing their non-profit status. Currently, non-profit entities are required to file such documentation only when requested by the Commission. In its comments, the National Telephone Cooperative Association (NTCA) opposed this proposed requirement, arguing that the *FNPRM* failed to demonstrate a need for the filing requirement.

4. We are adopting the requirement for filing non-profit documentation as proposed. We believe this requirement will substantially assist us in administering the fee program. Development of a comprehensive data base of exempt entities will enable us to assure that only those entities entitled to the exemption benefit from it. It will also help assure that we calculate fees based upon a more accurate assessment of the number of entities expected to pay fees. The one-time filing requirement will thus enable us to more equitably establish appropriate fees for all payers. Further, although NTCA expresses concern regarding the burden of the filing requirement, we believe that duplication and mailing of a document already retained in the ordinary course of an entity's business for tax and other purposes results in only a minimal administrative burden. We will thus require that all entities claiming an exemption from payment of regulatory fees file a copy of the documentation supporting their non-profit status. These documents must be submitted to the Secretary of the Commission at a time to be established in a public notice which will be published in the **Federal Register**. Entities claiming non-profit status must also notify the Secretary within sixty days of any change in their non-profit status; and for-profit purchasers or assignees of stations or facilities previously owned or operated by non-profit entities must also notify the Secretary of the purchase or reassignment within 60 days of the purchase or assignment.

5. NTCA also requested that we permit entities claiming exemption from payment of a regulatory fee to establish their non-profit status using types of documentation other than their current IRS determination letters or certification from a state or other governmental authority. Specifically, NTCA argues that an entity's Articles of Incorporation are the best evidence of its non-profit status and the Commission should also accept the Articles, annual state reports or similar documents. NTCA believes that its proposal will lessen the administrative burden on small entities. We note that IRS determination letters and state or government certifications are generally one or two page documents maintained as part of an entity's business files, which can easily be copied and filed with the Commission. Nevertheless, if for some reason an entity is unable to produce governmental certification, the amended rules also permit submission of other documents establishing non-profit status, as long as the documents bear evidence that non-profit status has been approved by a state or other governmental authority, consistent with the laws or regulations of the jurisdiction.

Documentation of CMRS Fees

6. The *FNPRM* proposed to require Commercial Mobile Radio Service (CMRS) licensees to retain documents used in the calculation of their regulatory fees for a period of three years. A number of commenters argued that the Commission should not specify a format for those documents; that CMRS licensees should continue to retain flexibility in maintaining record keeping systems; that they should not be required to generate new or additional paperwork; and that they should not be required to substantiate fees in a manner not required for other services. *See* Comments filed by Bell Atlantic, NYNEX Mobile, Inc., Rural Cellular Association, Rural Telecommunications Group and GTE Service Corporation (GTE).

7. We agree that CMRS licensees should have maximum flexibility to determine what documents they will use to calculate fees and that they should not be required to generate new or additional paperwork. Our proposal required only that CMRS entities retain the work papers used or developed in the course of calculating their fees. Thus, we were not requiring that CMRS licensees undertake new or additional paperwork, or utilize any particular format for calculating their fees. Also to the extent this proposal imposed somewhat different requirements on CMRS licensees, we believe those differences were justified. We have identified several discrepancies between projected and actual CMRS regulatory fees which are of concern. For example, for FY 1996 the actual number of units for which regulatory fees were paid was 18.1% below the total that was used to formulate the CMRS fees. While this disparity may result from errors in estimating the overall number of subscribers in the CMRS services, we believe that closer oversight of CMRS fee payments is prudent. Assessing more accurate fees would also benefit, without any significant burden, all CMRS licensees by helping to ensure that all CMRS fee payers fully comply with their obligation to contribute to the recovery of our costs of regulating CMRS. Thus, we will require CMRS licensees to retain, and submit to the Commission upon request, those documents which were actually used in the calculation of their fee payments and that demonstrate the accuracy of the payment. This will enable the Commission to efficiently audit the fee payments of CMRS licensees without creating any undue additional burden.

8. GTE and United States Cellular Corporation (USCC) also argue that our proposed requirement that CMRS regulatees maintain their payment records for a three year period is unreasonable. GTE notes that our rules require telephone companies to retain their billing records for only eighteen

[1] See Attachment for a list of commenters who responded to the *FNPRM*.

months. See 47 CFR 42.6. We agree that requiring CMRS licensees to retain these records for three years is unnecessary. We expect that any verification of fee payments would be accomplished within two years from the time that the fee payments are made. Thus, we are modifying our proposal and will require only a two year retention period for this documentation. Southwestern Bell Mobile Systems, Inc. also asserts that the fee documentation may contain highly confidential customer information. In this regard, CMRS licensees with concerns about the disclosure of sensitive information in any submissions to the Commission may request confidential treatment pursuant to § 0.459 of the Rules. See 47 CFR 0.459.

Publication of Fee Data

9. In the *FNPRM,* we proposed to publish in the **Federal Register** a list of all commercial regulatees that have paid their regulatory fees, along with the amount of the fee paid by each fee payor, and the volume or number of units upon which the fee payment was based.[2] Many commenters opposed our proposal, contending that publication of fee payments and units would require regulatees to disclose highly confidential business information.

10. We agree that the proposal to publish payment data could result in the disclosure of sensitive marketing information in some instances. We also conclude that there is an insufficient basis at this time to warrant disclosure of such information. Thus, we will not publish either fee payment information or the unit totals upon which a fee payment is calculated. We believe, however, that publication of the names of commercial fee payers may serve as a deterrent to non-payment. Thus, we delegate to the Managing Director authority to issue annually a public notice setting forth the names of commercial regulatory fee payers and to publish the public notice in the **Federal Register**.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA),[3] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 62 FR 40036 (July 25, 1997). The Commission sought written public comments on the proposals in its *FNPRM,* including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.[4]

I. Need for and Objectives of this Report and Order

12. This rulemaking proceeding was initiated in order to modify our collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. None.

III. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

14. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

15. The proposals adopted in this *Report and Order* affect a very broad array of small entities, including small entities described as cable services or systems, common carrier services and related entities, international services, mass media services, and wireless and commercial mobile services. In the rulemaking proceeding in this docket preceding the *FNPRM,* we extensively described the small entities that might be affected by this action, and have also described the numbers of such entities. (See ''Final Regulatory Flexibility Analysis,'' Attachment A of *Report and Order,* MD Docket No. 96–186, FCC 97–215, released June 26, 1997, 62 FR 37408 (July 11, 1997).) We hereby incorporate into this FRFA, by reference, those descriptive sections from the previous *Report and Order.*

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. In the rulemaking proceeding in this docket preceding the *FNPRM,* we described the methodology used by affected entities to determine required fee amounts, the procedures for calculating and filing fee payments, the skills necessary to file, and the results of not filing in accordance with the rules. (See *Report and Order,* FCC 97–215 supra. at Attachment H and § 1.1157 through 1.1167 of the Commission's Rules, 47 CFR 1.1157 through 1.1167.) We hereby incorporate into this FRFA, by reference, those descriptions. In addition, we note that the proposals adopted here require Commercial Mobile Radio Service (CMRS) licensees to maintain and make available to the FCC, upon request, documentation concerning the basis for their fee payments and that these documents be retained by the payer for two years; require that non-profit entities exempt from the regulatory fee requirement submit documentation of their non-profit status; that for-profit entities purchasing a station from a non-profit entity notify the Commission of the sale or reassignment; and authorize the Commission to publish annually, in the **Federal Register**, a list of those firms and individuals who paid a fee for the preceding fiscal year and who engaged in the provision of communications for commercial purposes.

V. Steps Taken To Minimize Any Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. As described in the Paragraph 16, the Commission proposed certain modifications to the collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments. Each of the above-described proposals that require compliance would entail some level of economic impact, and this impact would fall on some small entities. We believe, however, that these proposals, if adopted, would help ensure the integrity of the regulatory fees program. We have reduced the impact as a result of public comments. Documentation concerning the basis for CMRS fees must be retained for only two years rather than three, and need not be submitted to the Commission

[2] Southwestern Bell Mobil Systems also contends that the *FNPRM*'s statement that regulatory fee payments by CMRS licensees shall be calculated on the ''number of pagers, cellular telephones, or PCS units'' is inconsistent with the fee payment requirements set forth in the *Report and Order.* We disagree. The *Report and Order* established fees for cellular telephone and PCS units in the CMRS Mobile Services and a fee for paging units in the CMRS Messaging Service.

[3] 5 U.S.C. § 603.

[4] *See* 5 U.S.C. § 604. The RFA, see 5 U.S.C. 601 *et seq.,* has been amended by the Contract with America Advancement Act (CWAAA), Public Law 104–121, 110 Stat. 847 (1996). Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA).

unless requested. Further, this *Report and Order* authorizes the Managing Director the option to publish only the names of fee payers and not fee amounts and unit counts objected to by commenters.

Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**, along with this *Report and Order.*

Ordering Clauses

18. *Accordingly, it is ordered,* That the rule changes as specified above and as set forth in the Attachment *are adopted.*

19. *It is further ordered* that the rule changes made herein will become effective November 5, 1997. This action is taken pursuant to Sections 4(i), 4(j), 9 and 303(r) of the Communications Act as amended, 47 U.S.C. 154(i), 154(j), 159 and 303(r).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

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

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

2. Section 1.1157 is amended by adding a new paragraph (d) to read as follows:

§ 1.1157 Payment of charges for regulatory fees.

* * * * *

(d) Any Commercial Mobile Radio Service (CMRS) licensee subject to payment of an annual regulatory fee shall retain for a period of two (2) years from the date on which the regulatory fee is paid, those business records which were used to calculate the amount of the regulatory fee.

3. Section 1.1159 is amended by adding a new paragraph (e) to read as follows:

§ 1.1159 Filing locations and receipts for regulatory fees.

* * * * *

(e) The Managing Director may issue annually, at his discretion, a Public Notice setting forth the names of all commercial regulatees that have paid a regulatory fee and shall publish the Public Notice in the **Federal Register**.

4. Section 1.1162 is amended by adding new paragraphs (c)(1) and (c)(2) to read as follows:

§ 1.1162 General exemptions from regulatory fees.

* * * * *

(c) * * *

(1) Any permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee based upon its status as a nonprofit entity, as described above, shall file with the Secretary of the Commission (Attn: Managing Director) written documentation establishing the basis for its exemption within 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director. Acceptable documentation may include Internal Revenue Service determination letters, state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority. Applicants, permittees and licensees are required to file documentation of their nonprofit status only once, except upon request of the Managing Director.

(2) Within sixty (60) days of a change in nonprofit status, a licensee or permittee previously claiming a 501(C) exemption is required to file with the Secretary of the Commission (Attn: Managing Director) written notice of such change in its nonprofit status or ownership. Additionally, for-profit purchasers or assignees of a license, station or facility previously licensed or operated by a non-profit entity not subject to regulatory fees must notify the Secretary of the Commission (Attn: Managing Director) of such purchase or reassignment within 60 days of the effective date of the purchase or assignment.

* * * * *

Note: The following attachment will not appear in the Code of Federal Regulations.

Attachment

Comments were filed by the following parties:

GTE Service Corporation
United States Cellular Corporation
Saco River Cellular Corporation
Citizens Utilities Company
Cellular XL Associates
Cellular Telecommunications Industry Association
American Mobile Telecommunications Association
BellSouth Corporation
PrimCo Personal Communications
Rural Cellular Association
Bell Atlantic NYNEX Mobile, Inc.
Rural Telecommunications Group
National Telephone Cooperative Association
Southwestern Bell Mobile Systems, Inc., et. al.
Personal Communications Industry Association

[FR Doc. 97–29176 Filed 11–4–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 214
Wednesday, November 5, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–85–AD]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Models EA–300 and EA–300/S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300 and EA–300/S airplanes. The proposed AD would require inspecting the upper longeron cutout bridge for cracks, repairing any cracks found, and modifying this area. The proposed AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent structural damage to the fuselage caused by cracks in the upper longeron cutout bridge, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–85–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hunxe, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–85–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–85–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain EXTRA Models EA–300 and EA–300/S airplanes. The LBA reports that life-cycle testing of the referenced airplanes revealed a potential for cracking on the upper longeron cutout bridge. These conditions, if not detected and corrected, could result in structural damage to the fuselage and eventual loss of control of the airplane.

Relevant Service Information

EXTRA has issued Service Bulletin No. 300–3–93, dated January 12, 1994, which specifies procedures for inspecting the upper longeron cutout bridge for cracks, repairing any cracks found, and modifying this area.

The LBA classified this service bulletin as mandatory and issued German AD No. 94–043, dated October 21, 1994, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany 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 LBA for Germany has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA for Germany; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other EXTRA Models EA–300 and EA–300/S airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the upper longeron cutout bridge for cracks, repairing any cracks found, and modifying this area. Accomplishment of the proposed actions would be in accordance with EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994.

Cost Impact

The FAA estimates that 68 airplanes in the U.S. registry would be affected by

the proposed AD, that it would take approximately 13 workhours (Inspection: 3 workhours; Modification: 10 workhours) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,640, or $980 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Extra Flugzeugbau GMBH: Docket No. 97–CE–85–AD.

Applicability: The following models and serial number airplanes, certificated in any category:

Model	Serial numbers
EA–300	V1 and 01 through 50.
EA–300/S	01 through 17.

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 (d) 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 structural damage to the fuselage caused by cracks in the upper longeron cutout bridge, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Upon accumulating 1,000 hours time-in-service (TIS) on the upper longeron or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, inspect the upper longeron cutout bridge for cracks in accordance with the *Instructions* section of EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994.

(b) Prior to further flight after the inspection required by paragraph (a) of this AD, accomplish the following in accordance with the *Instructions* section of EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994:

(1) Repair any cracks found in the upper longeron cut-out bridge; and

(2) Modify the upper longeron cut-out bridge.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hunxe, Germany; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 94–043, dated October 21, 1994.

Issued in Kansas City, Missouri, on October 29, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29231 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–93–AD]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Model EA–300/S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain EXTRA Flugzeugbau GmbH (EXTRA) Model EA–300/S airplanes. The proposed AD would require modifying the canopy latches or replacing the canopy latches with parts of improved design. The proposed AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the canopy while the airplane is in flight due to cracked canopy latches, which could result in loss of the canopy and possible loss of control of the airplane.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–93–

AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hunxe, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–93–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–93–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain EXTRA Model EA–300/S airplanes. The LBA reports cracks in the canopy front latches on the above-referenced airplanes. This condition, if not corrected, could result in failure of the canopy and eventual loss of the canopy and possible loss of control of the airplane.

Relevant Service Information

EXTRA has issued Service Bulletin No. 300–3–94, dated August 3, 1994, which specifies procedures for inspecting, repairing, and replacing the canopy latches on the affected airplanes.

The LBA classified this service bulletin as mandatory and issued German AD No. 94–258, dated August 25, 1994, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA for Germany has kept the FAA informed of the situation described above.

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

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other EXTRA Model EA–300/S airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the canopy latches or replacing the canopy latches with parts of improved design, part number (P/N) PC–23303.8P1 for both front latches and the rear right; and P/N PC–23303.8P2 for the rear left. Accomplishment of the proposed actions would be in accordance with EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994.

Cost Impact

The FAA estimates that 25 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed modifications or replacements, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,000, or $280 per airplane.

Differences Between the German AD, the Service Bulletin, and This Proposed AD

German AD 94–258, dated August 25, 1994, and EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994, both give the owners/operators of certain Model EA–300/S airplanes the option of (1) repetitively inspecting the canopy latches until cracks are found, and then modifying or replacing (with parts of improved design) any cracked latches; or (2) immediately modifying the existing latches or replacing the latches with parts of improved design.

The FAA's policy is to provide corrective action that will eliminate the need for repetitive inspections. The FAA has determined that long-term operational safety will be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures.

Because the modification or replacement (with parts of improved design) of the canopy latches eliminates the need for repetitive inspections, the proposed AD differs from the service bulletin and the German AD in that it would mandate either modification or replacement of the canopy latches regardless of condition.

Regulatory Impact

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

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

regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Extra Flugzeugbau GMBH: Docket No. 97–CE–93–AD.

Applicability: Models EA–300/S airplanes, serial numbers 01 through 24, 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 (c) 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 within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the canopy while the airplane is in flight due to cracked canopy latches, which could result in loss of the canopy and possible loss of control of the airplane, accomplish the following:

(a) Modify all canopy latches or replace all canopy latches with parts of improved design, part number (P/N) PC–23303.8P1 for both front latches and the rear right; and P/N PC–23303.8P2 for the rear left. Accomplish the modifications or replacements in accordance with the *Instructions* section of EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hunxe, Germany; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 94–258, dated August 25, 1994.

Issued in Kansas City, Missouri, on October 29, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29239 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 303

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 971021249–7249–01]

RIN 0625–AA50

Proposed Limit on Duty-Free Insular Watches in Calendar Year 1998

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites public comment on a proposal to amend the ITA regulations, which govern duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam and American Samoa) and the Northern Mariana Islands. The proposed amendments would establish the total quantity and respective territorial shares of insular watches and watch movements which would be allowed to enter the United States free of duty during calendar year 1998 and make a minor adjustment to the verification of shipments.

DATES: Comments must be received on or before December 5, 1997.

ADDRESSES: Address written comments to Faye Robinson, Program Manager, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in Section 110 of Public Law 97–446 (96 Stat. 2331) (1983) as amended by Section 602 of Public Law 103–465 (108 Stat. 4991) (1994) additional U.S. Note 5 to chapter 91 of the HTS requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in §§ 303.3 and 303.4 of title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). The Departments propose to establish for calendar year 1998 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	2,600,000
Guam	500,000
American Samoa	500,000
Northern Mariana Islands	500,000

Compared to the total quantity established for 1997 (61 FR 55883; October 30, 1996), this amount would be a decrease of 500,000 units. The proposed Virgin Islands territorial share would be reduced by 500,000 and the shares for Guam, American Samoa and the Northern Mariana Islands would not change. The amount we proposed for the Virgin Islands is more than sufficient for the anticipated needs of all the existing producers.

The proposed rule would also modify § 303.6(a). Currently, the Departments are able to verify shipments through the U.S. Customs Service. However, due to informal entry procedures on some shipments or other problems, Commerce is occasionally unable to verify an entry. We propose allowing producers to

provide other means of verification satisfactory to the Secretaries in these situations.

The proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Assistant General Counsel for Legislation and Regulation has certified to the Chief Counsel, Small Business Administration, that the proposed rule will not have a significant economic impact on a substantial number of small entities. This is because the rulemaking is primarily to make technical changes.

Paperwork Reduction Act. This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* which is currently approved by the Office of Management and Budget under control number 0625–0134. The amendments would have no effect on the information burden on the public.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

It has been determined that the proposed rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we propose to amend 15 CFR Part 303 as follows:

PART 303—[AMENDED]

§ 303.6 [Amended]

1. Section 303.6(a) is amended by adding to the second to last sentence ‘‘, or verified by other means satisfactory to the Secretaries,’’ after the words U.S. Customs Service.

§ 303.14 [Amended]

2. Section 303.14(e) is amended by removing ‘‘3,100,000’’ and adding ‘‘2,600,000’’ in its place.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Allen Stayman,

Director, Office of Insular Affairs.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 97N–0435]

Substantial Evidence of Effectiveness of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA), as directed by the Animal Drug Availability Act of 1996 (ADAA), is proposing to amend its new animal drug regulations to further define the term ‘‘substantial evidence.’’ The purpose of this proposed regulation is to encourage the submission of new animal drug applications (NADA's) and supplemental NADA's for single ingredient and combination new animal drugs. The proposal also encourages dose range labeling.

DATES: Submit written comments on the proposed rule by February 3, 1998. Submit written comments on the information collection requirements by December 5, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn.: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the ADAA (Pub. L. 104–250) on October 9, 1996. The purpose of the ADAA is to facilitate the approval and marketing of new animal drugs and medicated feeds. In furtherance of this purpose, section 2(a) of the ADAA amended section 512(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(3)) to revise the definition of ‘‘substantial evidence.’’ Section 2(e) of the ADAA directs FDA to issue proposed regulations to further define the term ‘‘substantial evidence’’ in a manner that encourages the submission of NADA's and supplemental NADA's. Section 2(e) also directs FDA to issue proposed regulations to encourage dose range labeling. This proposed regulation further defines substantial evidence and encourages dose range labeling.

Before FDA can approve a new animal drug, FDA must find, among other things, that there is substantial evidence that the new animal drug is effective. The demonstration of effectiveness represents a significant component of drug development time and cost such that the amount and nature of the evidence needed can be an important determinant of whether and when new animal drugs become available to the public. The availability of certain approved new animal drugs for use in livestock, poultry, pets, and other animals is vital to protecting the health of animals and the health of humans who consume the products of food producing animals. The availability of other approved new animal drugs is vital to increasing the efficiency of food production in the United States. Thus, animal and human health and food production are best served by the development of substantial evidence of effectiveness in an efficient manner. The changes made to the definition of ‘‘substantial evidence’’ by the ADAA and by the further definition of that term in this proposed rule give FDA greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective.

II. The Statutory Definition of Substantial Evidence

The term ‘‘substantial evidence’’ as defined in section 512(d)(3) of the act refers to the number and types of adequate and well-controlled studies needed for a new animal drug to be determined to be effective for the intended uses under the conditions of use prescribed, recommended, or suggested (hereinafter suggested) in its labeling or proposed labeling.

Prior to the enactment of the ADAA, section 512(d)(3) of the act defined substantial evidence as:

[e]vidence consisting of adequate and well-controlled investigations, including field investigation, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

Under section 512(d)(3), as amended by the ADAA, substantial evidence is defined as:

[e]vidence consisting of one or more adequate and well-controlled investigations, such as,

(A) a study in a target species;

(B) a study in laboratory animals;

(C) any field investigation that may be required under this section and that meets the requirements of [section 512 (b)(3) of the act] if a presubmission conference is requested by the applicant;

(D) a bioequivalence study; or

(E) an in vitro study;

by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

Under the old definition, at least two adequate and well-controlled studies were necessary to demonstrate by substantial evidence the effectiveness of a new animal drug and at least one of those adequate and well-controlled studies was required to be a field study. Under the revised definition of substantial evidence it is possible that a minimum of one adequate and well-controlled study [1] may provide substantial evidence of the effectiveness of a new animal drug for its intended uses and associated conditions of use.

Furthermore, the statutory requirement for a field study has been eliminated, but FDA continues to have the authority to require field studies when necessary (H. Rept. 104–823, at 13 (1996)). Elimination of the requirement for a field study recognizes that while a field study (because it assesses the effectiveness of a new animal drug under conditions of use that approximate actual use conditions) remains an important element of many new animal drug approvals, there will be some instances in which a field study would yield no more useful information with regard to the new animal drugs effectiveness than can be obtained through laboratory studies. Thus, the new definition of substantial evidence specifically identifies types of adequate and well-controlled studies that may be used in lieu of, or in addition to, field studies to provide evidence of the effectiveness of a new animal drug.

III. Description of the Proposed Rule

FDA is proposing to amend part 514 (21 CFR part 514) by adding § 514.4 Substantial evidence to further define substantial evidence. Proposed § 514.4 describes the characteristics of substantial evidence that permit qualified experts to fairly and reasonably conclude that the drug will have the effect it purports or is represented to have under the conditions of use suggested in the proposed labeling. The proposed regulation would give FDA flexibility to determine, in light of the current state of relevant scientific knowledge, the minimum number of adequate and well-controlled studies needed, dependent upon the quality and persuasiveness of such studies, to permit qualified experts to conclude that a new animal drug is effective. Substantial evidence must include a sufficient number of studies of sufficient quality to permit experts qualified by scientific training and experience to fairly and reasonably conclude that the new animal drug is effective for each of the intended uses and associated conditions of use suggested in the proposed labeling.

A. Characteristics of Substantial Evidence (§ 514.4(b))

1. Intended Uses and Conditions of Use (§ 514.4(b)(2))

Proposed § 514.4(b)(2) requires that the sponsor demonstrate that a new animal drug is effective for each proposed intended use and associated conditions of use. A critical step in deciding the number and types of adequate and well-controlled studies needed to demonstrate effectiveness is to clearly define the intended uses and the associated conditions of use. Intended use refers to the structure or function of the body to be affected or the disease or condition to be treated, prevented, mitigated, or cured. Conditions of use that may be suggested in the proposed labeling for each intended use include, but are not limited to: The dose or dose range, frequency, duration, timing (e.g., in relation to the onset of clinical signs), and route of administration or application of the new animal drug; the withdrawal period (if any); the preparation of the new animal drug for use; the species, age, gender, class, and breed of animal for which the new animal drug is intended for use; and, restriction to use under the supervision of a licensed veterinarian.

The specific number and types of adequate and well-controlled studies needed to provide substantial evidence of effectiveness of a new animal drug will vary depending upon the number of intended uses, how narrowly or broadly each intended use is defined, and, further, upon the conditions of use associated with each intended use suggested in the proposed labeling. Intended uses are the determining factors in selecting the parameters to be measured under the conditions of use proposed for the new animal drug. Because a new animal drug must be shown to be effective for each intended use under the conditions of use suggested in the proposed labeling, the greater the number of intended uses and the more varied the associated conditions of use, the less likely it is that a single study can be designed and conducted to measure all relevant parameters. Likewise, the broader an intended use, e.g., the new animal drug is intended to treat a disease with multiple clinical presentations, the more likely it is that multiple studies will be needed.

One of the most important conditions of use for any new animal drug is the dosage. Dosage includes the dose or dose range, dosing frequency, and the dosing duration. Thus, a sponsor must demonstrate by substantial evidence that a new animal drug is effective for its intended use at the dose or dose range and the associated conditions of use suggested in the proposed labeling for that intended use. The studies needed to make such a demonstration will depend, in part, upon whether the new animal drug is labeled for use at a single fixed dose or over a dose range.

The substantial evidence necessary to support a dose range will further vary with the nature of the new animal drug and its intended uses. Proposed § 514.4(b)(2) provides that substantial evidence to support dose range labeling for a new animal drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for at least one intended use at the lower dose limit

[1] The ADAA requires FDA to issue a proposed regulation to further define the term ''adequate and well-controlled'' to require that field investigations be designed and conducted in a scientifically sound manner, taking into account practical conditions in the field and differences between field conditions and laboratory conditions. FDA published a proposed regulation further defining the term ''adequate and well-controlled'' in the **Federal Register** of May 8, 1997 (62 FR 25153).

prescribed in the proposed labeling and will be effective for each intended use at the dose suggested in the proposed labeling for that intended use. The proposed regulation also provides that substantial evidence to support a dose range for a new animal drug intended to affect the structure or function of the body of an animal for the purpose of enhancing production must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for each intended use at all the doses within the range prescribed for the intended use. In either instance, the upper limit of a dose range for any new animal drug will be set based on safety, both to the the target animal and to humans consuming products from animals treated with the new animal drug, as well as practicality, e.g., volume of injection or length of withdrawal period.

The agency notes that a conclusion that a new animal drug is effective for its intended uses no longer requires dose optimization. Prior to enactment of the ADAA in 1996, FDA was required under section 512(d)(1)(F) of the act to refuse to approve a new animal drug if, on the basis of any information before FDA, the tolerance limitation proposed, if any, exceeded that reasonably required to accomplish the physical or other technical effect for which the new animal drug is intended. In order to demonstrate by substantial evidence the minimal amount of a new animal drug reasonably required to accomplish the physical or technical effect, dose optimization, typically supported by adequate and well-controlled dose titration studies that characterize the critical aspects of the dose response relationship, was required. This characterization of the dose-response relationship permitted FDA to make a risk-benefit assessment of the new animal drug. That is, FDA could determine whether the effectiveness of a new animal drug outweighed the risks to the target animal at the dose or over the dose range prescribed in the proposed labeling.

With the enactment of the ADAA, the requirement for dose optimization has been eliminated. It is no longer necessary that the dose or dose range prescribed in the proposed labeling of a new animal drug be limited to that required to accomplish the physical or other technical effect. Therefore, a sponsor is now required to demonstrate by substantial evidence that a new animal drug is effective for each intended use at the associated dose or over the associated dose range prescribed in the proposed labeling. And, the sponsor must demonstrate that such dose or dose range is safe for the target animal and, at the labeled withdrawal time(s), does not result in a residue of such drug in excess of a tolerance found by FDA to be safe.

Although the requirement for dose optimization has been eliminated, sponsors will still need to characterize the critical aspects of the dose response relationship so that qualified experts can make an informed risk-benefit assessment of the new animal drug and assure that the proposed labeling is not false or misleading in any particular. Thus, a sponsor must characterize for an intended use and associated conditions of use the critical aspects of the dose-response relationship relevant to the dose or dose range selected. For example, for new animal drugs intended to affect the structure or function of the body of an animal for the purpose of enhancing production, generally a sponsor should characterize whether the dose or dose range prescribed in the proposed labeling for the new animal drug falls on the part of the dose-response curve at which there is increasing effectiveness or on the part of the dose-response curve at which effectiveness is essentially static, i.e., the plateau. This characterization does not, however, have to be demonstrated by substantial evidence.

FDA encourages the use of dose range labeling. The use of dose range labeling, particularly professional flexible labeling, enhances the ability of users to safely, effectively, and economically treat animals without using the new animal drug in an extra-label manner. As discussed previously, the critical aspects of the dose-response relationship must generally be characterized to support labeling, including dose range labeling. Although many drugs have increasing effectiveness over a definable dose range, most reach a point at which effectiveness is not measurably improved by increased dosing. Without a sufficient characterization of the dose-response relationship, qualified experts cannot determine whether dose range labeling is false or misleading in any particular and the user cannot be adequately informed regarding the appropriate use of the new animal drug.

2. Number of Studies (§ 514.4(b)(3)(i))

Whether substantial evidence for a particular new animal drug consists of a single adequate and well-controlled study of sufficient quality or one adequate and well-controlled study corroborated by additional adequate and well-controlled studies will depend on the new animal drug involved. Proposed § 514.4(b)(3)(i) provides that studies intended to provide substantial evidence of effectiveness shall consist of a sufficient number of studies of sufficient quality and persuasiveness to permit qualified experts in determining that the parameters reflect the effectiveness of the new animal drug; that the results obtained are likely to be repeatable, and that valid inferences can be drawn to the target animal[2] population; and, that the new animal drug is effective for the intended use at the dose or dose range and associated conditions of use suggested in the proposed labeling.

For each study that is part of substantial evidence, the critical characteristics of identity, strength, quality, purity, and physical form of the new animal drug used must be sufficiently documented to permit meaningful evaluation of the study and comparison with other studies conducted with the new animal drug (proposed § 514.117(b)(3) (62 FR 25153, May 8, 1997)).

For qualified experts to fairly and reasonably conclude that a new animal drug is effective for an intended use under the conditions of use suggested in the proposed labeling for the new animal drug, the study parameters selected for measurement must reliably reflect the effectiveness of the new animal drug for the intended use (selection of study parameters (§ 514.117(b)(3)(i)(A))). A new animal drug cannot be shown to be effective for an intended use without eliciting a measurable response with respect to parameters highly correlated to that intended use of the drug. Generally, a sponsor should evaluate parameters that provide direct evidence of effectiveness with respect to the intended use, but, where appropriate, a sponsor may measure effects on an established surrogate endpoint.

The studies that provide substantial evidence must provide reasonable assurance that the results obtained from the use of the new animal drug are repeatable when the new animal drug is applied or administered under conditions of use suggested in the proposed labeling (repeatability of study results (§ 514.4(b)(3)(i)(B)). The definition of substantial evidence in section 512 of the act prior to its amendment by the ADAA and its requirement for more than one adequate and well-controlled study were based

[2] Target animal and target animal population as used throughout this document refer to the animal or animal population for which the new animal drug is intended for use.

on the principle of independent substantiation. The goal of independent substantiation of experimental results is to ensure that an experimental finding of effectiveness is not the result of: Unanticipated, undetected, or systematic biases; study site-or investigator-specific factors that prevent generalization of the finding to the intended target animal population; or chance. Independent substantiation also provides a safeguard against those rare instances in which the results of a study are the product of fraudulent reporting of scientific studies. Independent substantiation continues to be a primary scientific principle upon which qualified experts can make a determination whether a new animal drug is effective.

Historically, the need for independent substantiation was frequently equated with the need for replication, i.e., replication of an identical study. While replication is usually a highly reliable way to independently substantiate experimental results, it is not the only way. Results obtained from studies that are different in design or execution or both may provide support for a conclusion of effectiveness that is at least as convincing as a repeat of the same study. Under the revised definition of substantial evidence, substantial evidence supporting the effectiveness of a new animal drug for an intended use may be achieved by carefully and properly designing and conducting a single adequate and well-controlled study or by conducting multiple adequate and well-controlled studies that need not replicate one another.

The number of studies needed to provide independent substantiation and support a finding by qualified experts that a new animal drug is effective will depend upon the quality of the studies and the inferential value of the studies. Whatever scientific evidence is needed to demonstrate the effectiveness of a new animal drug, the quality of that scientific evidence is of comparable importance to its quantity. Quality of a study includes factors such as the rigor, power, and scope of the design and conduct of a study, and the sufficiency of the study documentation. As the quality of an effectiveness study improves, the study's reliability, inferential value, and capacity to substantiate effectiveness improves.

Even when intended uses and conditions of use are narrowly defined and there is relevant scientific knowledge to inform qualified experts about the chemical entity, the disease or condition to be treated, or the structure or function to be affected, a single adequate and well-controlled study frequently will not suffice to establish the effectiveness of a new animal drug without the corroboration (independent substantiation) provided by other adequate and well-controlled studies. When considering whether to rely on a single adequate and well-controlled study, it is critical that the possibility of an incorrect outcome be considered and that all available data be examined for their potential to either support or undercut reliance on a single study. In those limited instances in which reliance is placed on a single adequate and well-controlled study that has the characteristics described in § 514.111(a)(5)(ii) (proposed § 514.117 (62 FR 25153, May 8, 1997)), such a study will need to be of sufficient quality, as well as persuasiveness in outcome, to enable qualified experts to make valid inferences from study results to the target animal population. The presence of the following characteristics in a study can contribute to a conclusion by qualified experts that a single adequate and well-controlled study provides substantial evidence of effectiveness: The study is a multicenter study in which no single study site provides an unusually large fraction of the target animals and no single investigator or site is disproportionately responsible for the effects seen; the study involves prospective randomized stratifications or identified analytic subsets that each show a significant effect; the study includes multiple endpoints involving different events; and, the study provides highly reliable and statistically strong evidence of effectiveness. The likelihood that qualified experts can rely on a single adequate and well-controlled study as establishing the effectiveness of a new animal drug increases with the number of these and similar characteristics displayed in the single study.

Inferential value of data (sometimes referred to as generalizability) relates to the confidence with which the data relating to effectiveness of a new animal drug for an intended use under the conditions tested can be used to conclude that the new animal drug will be effective in the target animal population for the intended use and associated conditions of use suggested in the proposed labeling (§ 514.4(b)(3)(i)(B)) . The inferential value of data may depend upon, among other things, how closely the test animals approximate the characteristics of the target animal population. Time, how recently a particular set of data has been collected, may also affect its inferential value. Animal research data has an effective life span during which time-dependent factors such as genetics of the target animal and the target organism, husbandry practices, and diets remain sufficiently static to assure the continued relevance of the data. Beyond this period, changes in target animal genetics, target organism genetics, husbandry practices, and diets may affect the ability of the new animal drug to achieve the effect demonstrated under prevailing conditions at the time of testing. Time is particularly meaningful in terms of the inferences that can be drawn from data relating to therapeutic uses of antimicrobial animal drugs because of the development of resistant microbes.

Substantial evidence must permit qualified experts to conclude that a new animal drug will have the effect it purports or is represented to have under the conditions of use suggested in the proposed labeling (concluding a new animal drug is effective (§ 514.4(b)(3)(i)(C)). Section 512 of the act requires that FDA issue an order refusing to approve an NADA if there is a lack of substantial evidence that the new animal drug will have the effect it purports or is represented to have under the conditions of use suggested in the proposed labeling. Similarly, the statute requires that FDA issue an order refusing to approve an NADA if, based on a fair evaluation of all the material facts, the proposed labeling is false or misleading in any particular, including as it relates to the demonstrated effectiveness of the new animal drug for its intended uses under associated conditions of use. Thus, sponsors should remember that it may be necessary to provide, in addition to or as part of substantial evidence, evidence that explicit or implicit claims relating to effectiveness made on the label of a new animal drug are neither false nor misleading.

3. Types of Studies (§ 514.4(b)(3)(ii))

Proposed § 514.4(b)(3)(ii) specifies that the types of adequate and well-controlled studies needed to provide substantial evidence may include, but are not limited to, published studies, foreign studies, studies using models, and studies conducted by or on behalf of the sponsor. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered as part of substantial evidence (§ 514.111; proposed § 514.117 (62 FR 25153, May 8, 1997)), and will not contribute to the current state of scientific knowledge that informs qualified experts.

The utility of published studies, foreign studies, and studies using

models as adequate and well-controlled studies to support a finding of effectiveness may vary. The use of published studies raises at least two questions: (1) How reliable are the data? and, (2) do the data represent a skewed subset of information?

Published literature, even in peer-reviewed journals, may not be free from error, omission, misinterpretation, or even outright fraud. Peer reviewers of articles submitted for publication in journals vary in the relevant experience and expertise they may have to review particular journal articles and, typically, only have access to a limited data set and analyses. As noted by Dr. Richard Horton, editor of *The Lancet*, an international biomedical journal, ''* * * the review process will only rarely detect misconduct and it may well miss critical flaws in a research article'' (Ref. 1). Dr. Horton further noted that in instances where legitimate questions are raised about the validity of research methods and data analyses, ''[i]t is possible that the only way to settle the dispute is to provide access to raw data or to invite the institution where the research was conducted to assist in the ongoing investigations'' (Ref. 1). In many instances, published literature is intended to advance science by stimulating further analysis and interpretation. In that sense, some amount of error is not necessarily bad; disputes over analyses and interpretation can drive scientific research and progress (Ref. 1). However, if a sponsor of a new animal drug uses a published study to provide evidence that a new animal drug is effective, use of invalid research methods or invalid data analyses in the study will make the study unacceptable.

FDA's ability to rely on a published study as an adequate and well-controlled study that is part of substantial evidence is enhanced, and in many cases is only possible, if FDA can obtain additional critical study details. The level of scrutiny for such a published study should not be less rigorous than that given to studies conducted by or on behalf of the sponsor that are intended to be adequate and well-controlled studies to support a determination of effectiveness.

Providing as much of the following types of information about a study, in conjunction with the published report, can increase the likelihood that the study can be relied upon as an adequate and well-controlled study: A statement describing the extent, if any, to which the study was funded or supported by the sponsor; the qualifications of the expert who conducted the study; a copy of the protocol, as amended, used for the study, of sufficient detail to permit the study to be reconstructed or repeated; access to written documentation describing the practices followed in the conduct of the study (including identification of animals omitted from analysis, and an analysis of results using all subjects with on-study data); the prospective statistical analysis plan and any changes from the original plan that occurred during or after the study; a full accounting of all investigational animals; an adequate characterization of the new animal drug used in the study; assay data for the new animal drug; and, complete study records including pertinent baseline characteristics for each animal or experimental unit of animals.

In addition to the public debate concerning the reliability of peer-reviewed published data, there has been expressed in recent years concern that published studies represent a skewed subset of all existing information available on a particular subject. While it may not be possible to determine the extent to which the published studies represent a skewed subset of all existing information, the likelihood of reliance on published literature is increased not only by full knowledge about how the studies were conducted but by the availability of a balanced discussion of the published studies listed in the bibliography that both support and raise questions relating to the safety and effectiveness of the new animal drug. The current regulations already require a sponsor to provide as part of its NADA a complete bibliography and a summary of each published study relevant to the intended uses of the new animal drug for which approval is sought (§ 514.1(b)(7)(iv)).

An adequate and well-controlled foreign study may also be relied upon to support a finding by substantial evidence that a new animal drug is effective. The utility of such studies depends upon whether the potential differences such as animal breeds, genetic composition within a breed, diseases, nutrition, and husbandry practices between the foreign country and the United States are sufficiently addressed. There will be instances in which such differences will scientifically limit the applicability of results of foreign studies.

In some instances, model study designs may be appropriate for use in proving the effectiveness of a new animal drug. In order for a model study to be an adequate and well-controlled study that supports a finding that a new animal drug is effective, the model must be validated to establish an adequate relationship of parameters measured and effects observed in the model with one or more significant effects of treatment in the target animal population under actual conditions of use. Proposed § 514.4(b)(3)(ii) requires such validation. If the correlation of parameters measured and effects observed in the model with one or more significant effects of treatment has not been established as part of general scientific knowledge, such correlation must be established scientifically.

The number and types of new studies that need to be conducted by or on behalf of a sponsor to demonstrate by substantial evidence the effectiveness of a new animal drug for a particular intended use will depend upon factors such as: the availability (either publicly or through right of reference) of information about the drug or the active ingredient, and, in some cases, the chemical class to which it belongs, information derived from studies of other approved or unapproved uses of the active ingredient or drug, and information derived from foreign studies if applicable to the proposed use and the target animal population in the United States; whether the nature of the new animal drug or active ingredient, or the proposed claims, makes the new animal drug conducive to in vitro testing or data extrapolation via pharmacokinetic studies; the availability of published studies involving the new animal drug (as discussed previously); and, concern for animal welfare. The science and practice of drug research and development have significantly evolved since the effectiveness requirement for drugs was established in 1962, and this evolution has implications for the number and type of data needed to demonstrate effectiveness of a particular new animal drug. Today, for many disease conditions, there is a greater understanding of pathogenesis, disease stages, treatment modalities and their characteristics, and, frequently, an increased general understanding regarding the activity of a particular chemical entity or related chemical entities in humans or other animals.

Thus, if there is a significant amount of existing relevant scientific knowledge available to inform qualified experts about a chemical entity, such as the effectiveness of a chemical entity in a condition closely related to that for which the new animal drug is intended, about the pathogenesis and stages of the disease or condition to be treated, or the production function (e.g., weight gain or feed efficiency) to be affected, by the chemical entity, fewer new studies may need to be conducted to support FDA's determination of the effectiveness of the

drug for its intended use. Conversely, the less information known about the nature of the chemical entity or about the disease or condition to be treated or the production effect to be achieved, the greater the need for new studies to support a determination of the effectiveness of the new animal drug. If new studies need to be conducted, existing relevant scientific knowledge may, at least, be helpful in designing studies which provide highly reliable and statistically strong evidence of effectiveness.

B. Substantial Evidence for Combination New Animal Drugs (§ 514.4(c))

Under the ADAA, a streamlined approval process was established for certain combination new animal drugs. Section 512(d)(4) of the act provides that, except in the case of a combination new animal drug that is intended for use other than in animal feed or drinking water (hereinafter referred to as ''dosage form combination new animal drugs'')[3] and contains a nontopical antibacterial ingredient or animal drug, FDA will not refuse to approve an application for a dosage form combination new animal drug that contains active ingredients or animal drugs that have previously been separately approved on grounds that there is a lack of evidence of effectiveness if the sponsor: (1) Demonstrates by substantial evidence that each active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination makes a contribution to effectiveness, and (2) demonstrates (a) that each active ingredient or animal drug intended for at least one use that is different from all other active ingredients or animal drugs used in the combination provides appropriate concurrent use for the intended target animal population, and (b) if FDA has a scientific basis to believe the active ingredients or animal drugs may be incompatible or have disparate dosing regimens, that the active ingredients or animal drugs are physically compatible and do not have disparate dosing regimens (section 512(d)(4)(C) of the act). FDA will not refuse to approve an application for a combination new animal drug that is intended for use in animal feed or drinking water and contains active ingredients or animal drugs that have previously been separately approved on grounds that there is a lack of evidence of effectiveness if the sponsor: (1) Demonstrates by substantial evidence that each active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination, and, if there is more than one than one antibacterial ingredient or animal drug, each antibacterial ingredient or animal drug, makes a contribution to labeled effectiveness, and (2) demonstrates (a) that each active ingredient or animal drug that is intended for at least one use that is different from all other active ingredients or animal drugs in the combination provides appropriate concurrent use for the intended target animal population, and (b) if FDA has a scientific basis to believe the active ingredients or animal drugs intended for use in drinking water may be incompatible, that the active ingredients or animal drugs are physically compatible (section 512(d)(4)(D) of the act). For all other combination new animal drugs, FDA will not refuse to approve an application on the grounds that there is a lack of evidence of effectiveness if the sponsor demonstrates by substantial evidence that the combination new animal drug will have the effect it purports or is represented to have under the conditions of use suggested in the proposed labeling for the combination new animal drug and that each active ingredient or animal drug contributes to the effectiveness of the combination new animal drug.

To implement these statutory provisions, proposed § 514.4(c)(1)(i) defines a combination new animal drug as a new animal drug that contains more than one active ingredient or animal drug that is applied or administered simultaneously in a single dosage form or simultaneously in or on animal feed or drinking water. The substantial evidence necessary to support a conclusion by qualified experts that a combination new animal drug is effective will vary depending upon the active ingredients or animal drugs used in the combination.

Proposed § 514.4(c)(2) provides that for combination new animal drugs that contain active ingredients or animal drugs that have previously been separately approved for the particular uses and conditions of use for which they are intended in combination (hereinafter ''previously been separately approved''), except in the case of a combination new animal drug that is intended for use other than in animal feed or drinking water that contains a nontopical antibacterial ingredient or animal drug, a sponsor must demonstrate by substantial evidence, as defined in section 512(d)(3) of the act and this proposed regulation, that any active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination makes a contribution to the effectiveness of the combination new animal drug. For combination new animal drugs that contain active ingredients or animal drugs that have previously been separately approved for use in animal feed or drinking water and contain more than one antibacterial ingredient or animal drug, the sponsor must also demonstrate by substantial evidence, as defined in section 512(d)(3) of the act and this proposed regulation, that each antibacterial makes a contribution to labeled effectiveness.

Proposed § 514.4(c)(3) provides that for all other combination new animal drugs (i.e., those that contain active ingredients or animal drugs that have not previously been separately approved and those that are dosage form combination new animal drugs that contain an active ingredient or animal drug that is a nontopical antibacterial), the sponsor must demonstrate by substantial evidence, as defined in section 512(d)(3) of the act and this proposed regulation, that: (1) The combination new animal drug will have the effect it purports or is represented to have under the conditions of use suggested in the proposed labeling, and (2) each active ingredient or animal drug contributes to the effectiveness of the combination new animal drug.

On occasion, FDA may have a substantiated scientific basis for believing that the use in combination of active ingredients or animal drugs that have previously been separately approved will result in a decrease in the effectiveness of one or more of the active ingredients or animal drugs. Although section 512(d)(4) of the act generally provides for a modified approval process for combination new animal drugs containing active ingredients or animal drugs that have previously been separately approved, FDA will, to the extent necessary, require additional testing to characterize the effectiveness of such a combination new animal drug to assure that the labeling will not be false or misleading in any particular, consistent with section 512(d)(1)(H) of the act.

For purposes of determining the substantial evidence necessary to demonstrate the effectiveness of a combination of animal drugs that have

[3] Use of the phrase ''dosage form combination new animal drugs'' as used in this preamble is a shorthand reference to combination new animal drugs ''intended for use other than in animal feed or drinking water,'' the purpose of which is to make the complex preamble discussion relating to combination new animal drugs more readable. The term ''dosage form,'' outside of the discussion in this preamble relating to the combination new animal drug provisions of the act, includes and will continue to include new animal drugs intended for use in drinking water.

previously been separately approved, each animal drug brings with it to the combination each intended use for which it was previously separately approved under the conditions of use proposed for the combination new animal drug. If an active ingredient or animal drug has previously been separately approved as a prescription animal drug or a veterinary feed directive drug for any of the intended uses and conditions of use suggested in the proposed labeling for the combination new animal drug, the combination new animal drug, if approved, would usually need to be approved as a prescription animal drug or veterinary feed directive drug, respectively.

1. Antibacterial Active Ingredient or Animal Drug

The approval process provided by section 512(d)(4) of the act does not apply to dosage form combination new animal drugs if any of the active ingredients or animal drugs is a nontopical antibacterial. And, for combination new animal drugs intended for use in animal feed and drinking water that contain more than one antibacterial and qualify for approval under the process provided by section 512(d)(4), a sponsor must demonstrate by substantial evidence that each antibacterial ingredient or animal drug contributes to the effectiveness of the combination new animal drug. The act, as amended by the ADAA, treats antibacterial ingredients and animal drugs differently from other active ingredients and animal drugs because increasingly there are concerns that overuse or improper use of antibacterials may contribute unnecessarily to the development of antibacterial resistance.

Proposed § 514.4(c)(1)(ii) defines an ''antibacterial'' with respect to a particular target animal species as an active ingredient or animal drug: (1) That is approved for use in that species for the diagnosis, cure, mitigation, treatment, or prevention of bacterial disease; or (2) that is approved in that species for any other use that is attributable to its antibacterial properties.

2. Appropriate Concurrent Use and Compatibility

Section 512(d)(4)(C) and (d)(4)(D) of the act requires that in certain cases appropriate concurrent use and compatibility must be demonstrated. The demonstration need not be by substantial evidence but sponsors must provide a scientifically sound basis for qualified experts to reach these conclusions. Proposed § 514.4(c)(2)(iii) sets out the requirement for sponsors to establish appropriate concurrent use for the target species in cases in which each active ingredient or animal drug is intended for at least one use that is different from all the other active ingredients or animal drugs in the combination. To determine whether a combination new animal drug provides ''appropriate concurrent use'' the agency will consider factors such as whether the conditions to be treated by the combination are likely to occur simultaneously with sufficient frequency in the intended target animal population.

Proposed § 514.4(c)(2)(iv) and (c)(2)(v) sets out the requirements in section 512(d)(4)(C)(iii) and (d)(4)(D)(iv) of the act regarding compatibility. These requirements apply where, based on scientific information, FDA has reason to believe that for dosage form combination new animal drugs the active ingredients or animal drugs may be physically incompatible or have disparate dosing regimens or that for active ingredients or animal drugs intended for use in drinking water the active ingredients or animal drugs may be physically incompatible. The legislative history of ADAA describes the purpose of these provisions as ''authoriz[ing] FDA to deny approval of a combination animal drug if the physical compatibility or compatibility of the dosing regimens may affect the effectiveness of the combination animal drug and such compatibility is not demonstrated'' (H. Rept. 104–823 at 14 (1996)).

Scientific information exists that gives FDA reason to believe that dosage form combinations and combinations intended for use in drinking water may be physically incompatible and/or have disparate dosing regimens. With the enactment of the Generic Animal Drug Patent Term Restoration Act of 1988 (GADPTRA), it was well-recognized that, based on scientific information, the bioavailability of active ingredients may be affected by changes relating to the formulation or manufacture of a generic new animal drug and, therefore, the statute, rather than assuming bioequivalence based on the use of the same active ingredient, requires a demonstration of bioequivalence. Similarly, the bioavailability of an active ingredient or animal drug as part of a combination new animal drug may be affected by changes relating to the formulation or manufacture of the active ingredient or animal drug for use in the combination or to the formulation and manufacture of the combination new animal drug. Thus, FDA has scientific information that gives it reason to generally believe that active ingredients or animal drugs intended for use in a dosage form combination new animal drug may not be physically compatible and may have disparate dosing regimens or that for active ingredients or animal drugs intended for use in drinking water the active ingredients or animal drugs may not be physically compatible. Therefore, proposed § 514.4(c)(2)(iv) and (c)(2)(v) requires the sponsor to demonstrate the comparable bioavailability of the active ingredients or animal drugs in combination relative to the active ingredients or animal drugs singly. However, as with FDA's implementation of GADPTRA, certain classes of products are recognized to be of less concern with respect to potential differences in bioavailability, e.g., true solutions, inhalant anesthetics and some topicals. In such cases, some or all of the demonstration of comparable in vivo bioavailability may be waived. The proposed rule provides for such waivers where appropriate.

C. Conclusion

The basic premise underlying the modified requirement for demonstrating the effectiveness of particular combination new animal drugs is that there exists knowledge about the individual active ingredients or animal drugs contained in that combination. This knowledge exists in the approved applications in the form of substantial evidence of effectiveness of the individual active ingredients or animal drugs. The substantial evidence supporting the effectiveness of an approved active ingredient or animal drug generally is not publicly available but is usually owned by the sponsor of the approved application for the active ingredient or animal drug. Thus, the sponsor submitting an application for a combination new animal drug must either own the underlying applications or obtain a right of reference from the owners of such applications if FDA is to rely upon the substantial evidence contained in those applications.

Sponsors may submit supplemental NADA's and receive supplemental approval of new animal drugs for new intended uses. The approval of a new intended use for a single active ingredient new animal drug that has already been approved for use in a combination new animal drug may necessitate the submission of a new or supplemental application for the combination new animal drug. Such new or supplemental NADA for the combination new animal drug must contain substantial evidence of effectiveness in accordance with this

proposed regulation. Sponsors cannot circumvent approval requirements relating to the effectiveness of a combination new animal drug by adding or deleting intended uses to or from any of the new animal drugs approved for use in the combination subsequent to the approval of the combination new animal drug. Section 512(e)(1)(F) of the act would require withdrawal of an existing approval for the combination new animal drug unless the sponsor submits and FDA approves a supplement to the combination NADA that provides adequate information supporting any changes affecting its safety or effectiveness beyond the variations provided for in the approved application.

FDA recognizes that the requirements for obtaining approval of combination new animal drugs are complex. Following the Good Guidance Practices established in the **Federal Register** of February 27, 1997 (62 FR 869691), FDA's Center for Veterinary Medicine (CVM) intends to develop, for public comment, one or more draft guidance documents representing the agency's current thinking on what information should be included in NADA's to support combination new animal drugs.

In all instances, FDA encourages sponsors to meet with CVM to discuss the development of evidence of safety and effectiveness to support approval of an NADA for single ingredient or combination new animal drugs. In considering the number and types of the adequate and well-controlled studies needed to demonstrate the effectiveness of a new animal drug, the sponsor may also want to discuss with FDA any possible later expansion or extension of the claims for the new animal drug so that the studies conducted in support of the initially proposed intended uses will, to the extent possible, facilitate later approvals.

FDA has chosen to define substantial evidence, consistent with the spirit of the ADAA, in a manner that permits the maximum flexibility in determining what studies are necessary to demonstrate by substantial evidence that a new animal drug is effective. While specificity brings with it consistency and predictability, the spirit of the ADAA is flexibility, efficiency, and greater animal drug availability. FDA believes that consistency and predictability can be maintained by the application of sound science.

IV. Conforming Changes

This proposed rule would make necessary conforming changes to §§ 514.1(b)(8) and 514.111 of the current regulations.

V. Environmental Impact

FDA has carefully considered the potential environmental impacts of this proposed rule. The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and under the Regulatory Flexibility Act (5 U.S.C. 601–612). 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). FDA believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The proposed rule is not a significant regulatory action as defined by the Executive Order.

FDA, as directed by the ADAA, is further defining ''substantial evidence,'' the standard by which a new animal drug is determined to be effective for its intended uses under the conditions of use represented in its proposed labeling. The purpose of the proposed rule further defining substantial evidence is to encourage the submission of NADA's, the submission of supplemental NADA's, and the use of dose range labeling. Accordingly, the proposed definition of substantial evidence, while not changing the standard of effectiveness, recognizes that ''substantial evidence,'' as redefined under the ADAA, gives FDA greater flexibility to determine the number and types of studies that FDA would find demonstrate the effectiveness of any particular new animal drug. For example, under the new statutory definition, sponsor companies are no longer required, in every instance, to submit a field study to establish the effectiveness of a new animal drug under investigation. Because the new definition gives FDA greater flexibility to work with sponsors to tailor the evidence needed to demonstrate effectiveness, this proposed rule is not expected to impose any new marginal costs on the industry. Furthermore, because sponsors will have more options under this revised definition to design and conduct studies to demonstrate effectiveness, and because sponsors can be expected to choose the most efficient and cost effective option, the net effect of this provision is expected to be a small benefit to sponsors.

Further, the revised definition allows for the submission of as few as one adequate and well-controlled study, whereas the previous statutory language required at least two studies. While FDA expects that the instances in which a single study will be sufficient to demonstrate effectiveness will be limited, those sponsors who are able to demonstrate effectiveness by a single adequate and well-controlled study are likely to realize lower drug development costs.

The proposed rule also provides for the submission and review of NADA's for new animal drugs intended for use over a dose range. The ADAA eliminated the statutory requirement to limit the use of a new animal drug to an amount no greater than that reasonably required to accomplish the physical or other technical effect of the drug for its intended use; the act, as amended by the ADAA, permits the use of a new animal drug at any level that is safe for the target animal, effective, and will not result in a residue of such drug in excess of a tolerance found to be safe. Because dose optimization is no longer required, sponsors are no longer required to conduct adequate and well-controlled in vivo dose titration studies, but need only conduct such studies as may be needed to characterize the dose or dose range so that FDA can make a risk-benefit assessment and assure that the labeling for a new animal drug is not false or misleading. Because there will be greater flexibility in determining the studies needed to characterize the dose-response relationship, sponsors are expected to realize a small cost savings.

Finally, the proposed rule further defines substantial evidence as it relates to combination new animal drugs. For certain combination new animal drugs that contain active ingredients or animal drugs that have previously been separately approved, sponsors will not be required to conduct additional studies to demonstrate that the combination new animal drug is effective. This change is expected to provide a cost savings to the sponsors of NADA's that meet the criteria for the streamlined approval process.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant economic impact

on a substantial number of small entities. As this proposed regulation will not impose significant new costs on any firms, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (2 U.S.C. 1532) requires that agencies prepare an assessment of the anticipated costs and benefits before proposing any rule that may result in annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA of 1995) (44 U.S.C. 3501–3520). A description of the information collection provisions and an estimate of the annual collection of information burden follow.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the validity of the methodology and assumptions used.

Title: Substantial Evidence of Effectiveness of New Animal Drugs.

Description: As directed by the ADAA, FDA is publishing a proposed regulation to further define substantial evidence in a manner that encourages the submission of NADA's and supplemental NADA's and encourages dose range labeling. The proposed regulation implements the definition of ''substantial evidence'' in 21 U.S.C. 360b(d)(3) as amended by the ADAA. Substantial evidence is the standard that a sponsor must meet to demonstrate the effectiveness of a new animal drug for its intended uses under the conditions of use suggested in its proposed labeling. The proposed regulation, § 514.4(a), gives FDA greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective. The proposed regulation will reduce the number of adequate and well-controlled studies necessary to demonstrate the effectiveness of certain combination new animal drugs, will eliminate the need for an adequate and well-controlled dose titration study, and may, in limited instances, reduce or eliminate the number of adequate and well-controlled field investigations necessary to demonstrate by substantial evidence the effectiveness of a new animal drug.

Table 1 below represents the estimated burden of meeting the new substantial evidence standard. The numbers in the chart are based on recent consultation with several of the major research and development firms that conduct the majority of studies submitted to establish substantial evidence of effectiveness of new animal drugs. Because of the more flexible requirements for demonstrating substantial evidence of effectiveness, FDA estimates that the proposed regulation would reduce by approximately 10 percent the total annual burden associated with demonstrating the effectiveness of a new animal drug as part of an NADA or supplemental NADA submission.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.4(a)	190	4.5	860	632.6	544,036

There are no capital costs or operating and maintenance costs associated with this collection.

In compliance with section 3507(d) of the PRA of 1995, the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by December 5, 1997 to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn.: Desk Officer for FDA.

IX. References

The following information has been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Horton, Richard, ''Revising the Research Record,'' *The Lancet*, vol. 346, p. 1610–11, 1995.

List of Subjects in 21 CFR part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

2. Section 514.1 is amended by revising paragraphs (b)(8)(ii) and (b)(8)(v) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(8) * * *

(ii) An application may be refused unless it includes substantial evidence

of the effectiveness of the new animal drug as defined in § 514.4.

* * * * *

(v) If the new animal drug is a combination of active ingredients or animal drugs, an application may be refused unless it includes substantial evidence of the effectiveness of the combination new animal drug as required in § 514.4.

* * * * *

3. Section 514.4 is added to subpart A to read as follows:

§ 514.4 Substantial evidence.

(a) *Definition of substantial evidence.* Substantial evidence means evidence consisting of one or more adequate and well-controlled studies, such as a study in a target species, study in laboratory animals, field study, bioequivalence study, or an in vitro study, on the basis of which it could fairly and reasonably be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of the new animal drug involved that the new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof. Substantial evidence shall include such adequate and well-controlled studies that are, as a matter of sound scientific judgment, necessary to establish that a new animal drug will have its intended effect.

(b) *Characteristics of substantial evidence*—(1) *Qualifications of experts.* Studies that are intended to provide substantial evidence of the effectiveness of a new animal drug shall be conducted by experts qualified by scientific training and experience.

(2) *Intended uses and conditions of use.* Studies that are intended to provide substantial evidence of the effectiveness of a new animal drug shall demonstrate that the new animal drug is effective for each intended use and associated conditions of use for and under which approval is sought. Substantial evidence to support dose range labeling for a new animal drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for at least one intended use at the lower dose limit prescribed in the proposed labeling and will be effective for each intended use at the dose suggested in the proposed labeling for that intended use. Substantial evidence to support a dose range for a new animal drug intended to affect the structure or function of the body of an animal for the purpose of enhancing production must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for each intended use at all the doses within the range prescribed for the intended use. Sponsors should, to the extent possible, provide for a dose range because it increases the utility of the new animal drug by providing the user flexibility in the selection of a safe and effective dose.

(3) *Studies*—(i) *Number.* Substantial evidence of the effectiveness of a new animal drug for an intended use and associated conditions of use shall consist of a sufficient number of current adequate and well-controlled studies of sufficient quality and persuasiveness to permit qualified experts:

(A) To determine that the parameters selected for measurement and the measured responses reliably reflect the effectiveness of the new animal drug;

(B) To determine that the results obtained are likely to be repeatable, and that valid inferences can be drawn to the target animal population; and

(C) To conclude that the new animal drug is effective for the intended use at the dose or dose range and associated conditions of use prescribed, recommended, or suggested in the proposed labeling.

(ii) *Types.* Adequate and well-controlled studies that are intended to provide substantial evidence of the effectiveness of a new animal drug may include, but are not limited to, published studies, foreign studies, studies using models, and studies conducted by or on behalf of the sponsor. Studies using models shall be validated to establish an adequate relationship of parameters measured and effects observed in the model with one or more significant effects of treatment.

(c) *Substantial evidence for combination new animal drugs*—(1) *Definitions*—(i) Combination new animal drug means a new animal drug that contains more than one active ingredient or animal drug that is applied or administered simultaneously in a single dosage form or simultaneously in or on animal feed or drinking water.

(ii) For purposes of this section, antibacterial with respect to a particular target animal species means an active ingredient or animal drug:

(A) That is approved in that species for the diagnosis, cure, mitigation, treatment, or prevention of bacterial disease; or

(B) That is approved for use in that species for any other use that is attributable to its antibacterial properties.

(2) *Combinations with active ingredients or animal drugs that have previously been separately approved.* Except in the case of a combination new animal drug intended for use other than in animal feed or drinking water that contains a nontopical antibacterial ingredient or animal drug, for combination new animal drugs that contain active ingredients or animal drugs that have previously been separately approved for the particular uses and conditions of use for which they are intended in combination, a sponsor shall incorporate into the application for the combination new animal drug substantial evidence of the effectiveness of each active ingredient or animal drug previously approved and shall demonstrate:

(i) By substantial evidence, as defined in this section, that any active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination makes a contribution to the effectiveness of the combination new animal drug;

(ii) For such combination new animal drugs that are intended for use in animal feed or drinking water and contain more than one antibacterial ingredient or animal drug, by substantial evidence, as defined in this section, that each antibacterial makes a contribution to labeled effectiveness;

(iii) That each active ingredient or animal drug intended for at least one use that is different from all the other active ingredients or animal drugs used in the combination provides appropriate concurrent use for the intended target animal population;

(iv) Unless waived in specific cases, that the active ingredients or animal drugs intended for use other than in animal feed or drinking water are physically compatible and do not have disparate dosing regimens by demonstrating bioavailability of the active ingredients or animal drugs in combination relative to the bioavailability of active ingredients or animal drugs singly; and,

(v) Unless waived in specific cases, that the active ingredients or animal drugs intended for use in drinking water are physically compatible by demonstrating bioavailability of the active ingredients or animal drugs in combination relative to the bioavailability of active ingredients or animal drugs singly;

(3) *Other combination new animal drugs.* For all other combination new

animal drugs, the sponsor shall demonstrate by substantial evidence, as defined in this section, that the combination new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling and that each active ingredient or animal drug contributes to the effectiveness of the combination new animal drug.

4. Section 514.111 is amended by revising paragraph (a)(5) to read as follows:

§ 514.111 Refusal to approve an application.

(a) * * *

(5) Evaluated on the basis of information submitted as part of the application and any other information before the Food and Drug Administration with respect to such drug, there is lack of substantial evidence as defined in § 514.4.

* * * * *

Dated: October 30, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–29275 Filed 10–31–97; 2:48 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD–FRL–5903–6]

RIN 2060–AF71

Ambient Air Quality Surveillance for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Lead air pollution levels measured near the Nation's roadways have decreased 97 percent between 1976 and 1995 with the elimination of lead in gasoline used by on-road mobile sources. Because of this historic decrease, EPA is shifting its ambient air monitoring focus from measuring lead air pollutant concentrations emanating from mobile source emissions toward a focus on stationary point sources of lead air pollution. Today's action proposes to revise the part 58 lead air monitoring regulations to allow many lead monitoring stations to be discontinued while maintaining a core lead monitoring network in urban areas to track continued compliance with the lead National Ambient Air Quality Standards (NAAQS). This action also requires lead ambient air monitoring around lead stationary sources. This action is being taken at the direct request of numerous State and local agencies whose on-road mobile source-oriented lead monitors have been reporting peak lead air pollution values that are many times less than the quarterly lead NAAQS of 1.5μg/m³ for many years. Approximately 70 of the National Air Monitoring Stations (NAMS) and a number of the State and Local Air Monitoring Stations (SLAMS) could be discontinued with this action, thus making more resources available to those State and local agencies to deploy lead air quality monitors around heretofore unmonitored lead stationary sources.

DATES: Comments must be submitted on or before December 5, 1997.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air Docket (LE–131), US Environmental Protection Agency, Attn. Docket No. A–91–22, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Brenda Millar, Emissions, Monitoring, and Analysis Division (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541–4036, e-mail:millar.brenda@email.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

Sections 110, 301(a), and 319 of the Clean Air Act as amended 42 U.S.C. 7410, 7601(a), 7619.

II. Background

The current ambient air monitoring regulations that pertain to lead air sampling were written in the 1970's when lead emissions from on-road mobile sources (e.g., automobiles, trucks) were the predominant lead air emission source affecting our communities. As such, the current lead monitoring requirements focus primarily upon the idea of determining the air quality impacts from major roadways and urban traffic arterial highways. Since the 1970's, lead has been removed from gasoline sources for on-road vehicles (on-oad vehicles now account for less than 1 percent of total lead emissions), and a 97 percent decrease in lead air pollution levels measured in our neighborhoods and near roadways has occurred nationwide. Because of this historic decrease, EPA is reducing its requirements for measuring lead air pollutant concentrations near major highways, and is focusing on stationary point sources and their impacts on neighboring populations.

The current lead air monitoring regulations require that each urbanized area with a population of 500,000 or more operate at least two lead NAMS, one of which must be a roadway-oriented site and the second must be a neighborhood site with nearby traffic arteries or other major roadways. There are approximately 85 NAMS in operation and reporting data for 1996. This action would reduce this NAMS requirement to include one NAMS site in one of the two largest Metropolitan Statistical Areas (MSA/CMSA) within each of the ten EPA Regions, and one NAMS population-oriented site in each populated area (either a MSA/CMSA, town, or county) where lead violations have been measured over the most recent 8 calendar quarters. This latter requirement is designed to provide information to citizens living in areas that have one or more lead stationary sources that are causing recent air quality violations. At present, the MSA/CMSAs, cities, or counties that have one or more quarterly Pb NAAQS violations that would be subject to this requirement include:

TABLE 1.—CMSA/MSA'S OR COUNTIES WITH ONE OR MORE LEAD NAAQS VIOLATIONS IN 1995–1996

CMSA/MSA or county	Contributing lead source(s)
Philadelphia-Wilmington-Atlantic City CMSA	Franklin Smelter in Philadelphia County, PA.
Tampa-St. Petersburg-Clearwater MSA	Gulf Coast Lead in Hillsborough County, FL.
Memphis MSA	Refined Metals in Shelby County, TN.
Nashville MSA	General Smelting in Williamson County, TN.
St. Louis MSA	Chemetco in Madison County, IL, and Doe Run in Jefferson County, MO.
Cleveland-Akron CMSA	Master Metals in Cuyahoga County, OH.
Iron County, MO	ASARCO in/near Hogan, MO.

TABLE 1.—CMSA/MSA'S OR COUNTIES WITH ONE OR MORE LEAD NAAQS VIOLATIONS IN 1995–1996—Continued

CMSA/MSA or county	Contributing lead source(s)
Omaha MSA	ASARCO in Douglas County, NE.
Lewis and Clark County, MT	ASARCO in/near East Helena, MT.

Data from these NAMS will be used to assess national trends in lead ambient air pollution. Figure 1 demonstrates the effect that these monitoring reductions will have on our national lead air pollutant trends.

For other monitoring within the SLAMS network, EPA is proposing to require, State and local agencies to focus their efforts toward establishing air monitoring networks around lead stationary sources which are causing or have a potential to cause exceedances of the quarterly lead NAAQS. Many of these sources have been identified through EPA's ongoing Lead NAAQS Attainment Strategy, and monitoring has already been established. In general, stationary sources emitting five or more tons per year are considered to be candidates for additional lead monitoring, although smaller stationary sources may also be problematic depending upon the facility's size and proximity to neighborhoods. EPA recommends a minimum of two sites per source, one located for stack emission impacts and the other for fugitive emission impacts. Variations of this two-site network are expected as source type, topography, locations of neighboring populations, and other factors play a role in how to most appropriately design such a network. EPA guidance for lead monitoring around point sources has been developed and is available through a variety of sources including the National Technical Information Service (703–487–4650), and electronic forms accessible through EPA's Office of Air Quality Planning & Standards Technology Transfer Network, Ambient Monitoring Technology Information Center (AMTIC) bulletin board system at http://ttnwww.rtpnc.epa.gov.

In addition to the changes to the lead monitoring requirements, EPA proposes several minor changes to update and correct regulatory provisions to current practices. Specifically this affects 40 CFR part 58 sections 58.31, 58.34, 58.41, Appendix B, Appendix D sections 3.2 and 3.3, and Appendix G sections 1 and 2b.

III. Administrative Requirements Section

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of the Executive Order 12866 and is therefore not subject to formal OMB review.

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. This action proposes to revise the part 58 air monitoring regulations for lead to allow many monitoring sites to be discontinued. The Office of Management and Budget (OMB) has previously approved the information collection requirements in the part 58 regulation under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0084 (EPA ICR No. 0940.13 and revised by 0940.14).

C. Impact on Small Entities

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entitites. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions whose jurisdictions are less than 50,000 people. This proposal will not have a significant impact on a substantial number of small entities because it does not impact small entities whose jurisdictions cover less than 50,000 people. Pursuant to the provision of 5 USC 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

Since this modification is classified as minor, no additional reviews are required.

D. 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 standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the standard 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 standards. The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments. Therefore, the requirements of the Unfunded Mandates Act of 1995 do not apply to this action.

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements.

Carol W. Browner,
Administrator.
[FR Doc. 97–29293 Filed 11–4–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 97–354]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On October 2, 1997, the Commission adopted a Notice of Proposed Rulemaking (NPRM), that initiates a proceeding with the goal of reviewing comprehensively the Part 36 jurisdictional separations procedures to ensure that they meet the objectives of the Telecommunication Act of 1996 (1996 Act), and to consider changes that may need to be made to the jurisdictional separations process in light of changes in the law, technology, and market structure of the telecommunications industry. Pursuant to section 410(c) of the Communications Act, the Commission refers the issues raised in the NPRM to the Federal-State Joint Board established in CC Docket No. 80–286 (Separations Joint Board) for preparation of a recommended decision.

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under 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: Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 10, 1997, and reply comments on or before January 26, 1998. Written comments by the public on the proposed and/or modified information collections are due December 10, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 5, 1998.

ADDRESSES: Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties should also send a paper copy, and a copy on 3.5 inch diskette formatted in an IBM compatible form using, if possible, WordPerfect 5.1 for Windows software, to Connie Chapman of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, N.W., room 258H, Washington, D.C. 20554. Parties also must serve comments on the Federal-State Joint Board in accordance with the service list (See Attachment). Commenters should also provide one copy of any documents filed in this proceeding to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lynn Vermillera, Accounting and Audits Division, Common Carrier Bureau, (202) 418–7120. Alternate contact, Connie Chapman (202) 418–0885. For additional information concerning the information collections contained in this Notice contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted October 2, 1997, and released October 7, 1997 The full text of this Commission NPRM is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 239), 1919 M St., N.W., Washington, D.C. The complete text of this NPRM may also be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of Notice of Proposed Rulemaking

1. The NPRM seeks comment on the changes in law, technology, and market structure of the telecommunications industry that affect the separations process. It then seeks comment on the criteria that should be used to evaluate the existing separations process and proposals to reform the process in light of the goals of our comprehensive review.

2. In addition, the NPRM seeks comment on whether separations rules are still needed during the transition period from a regulated to a competitive marketplace. In this section, the Commission seeks comment on whether some form of separations must exist under the 1930 *Smith* v. *Illinois* decision, or whether statutory, regulatory and market changes since that decision have been so pronounced and persuasive as to make its holding inapplicable in the new deregulatory environment.

3. The NPRM then seeks comment on industry proposals to replace the existing Part 36 separations rules. In particular, the NPRM seeks comment on three industry proposals. The NPRM first seeks comment on NYNEX's proposal to separate costs for individual incumbent local exchange carriers (ILECs) in a given study area based on a single, frozen, interstate allocation factor. It then seeks comment on Bell South's proposal to separate costs in each study area based on two factors, one for investment and one for expenses. It then seeks comment on Southwestern Bell's proposal to consolidate the several dozen plant and service categories in the existing separations rules into four cost categories.

4. The NPRM then evaluates the existing separations rules and seeks comment on how various separations reform options would affect prices and revenue requirements. In this section, the NPRM seeks comment on revisions to the definition of ''study area.'' It also seeks comment on whether the existing set of plant, expense, and service categories should be revised. The NPRM also seeks comment on whether there is a need to revise the way in which costs are apportioned to each category and the way in which those costs are then apportioned to the interstate and intrastate jurisdiction.

5. The NPRM also seeks comment on whether and how to separate the costs associated with interconnection. In this section, the Commission proposes two alternatives for allocating the costs of providing interconnection between the state and federal jurisdiction. The first alternative is for the costs, once identified in part 32 as proposed in the companion NPRM on accounting for interconnection, to be removed entirely from the separations process and allocated through a process designed to apply exclusively to these costs. The second alternative is that the costs, once identified in part 32, be separated

through the current separations process and allocated directly to the state jurisdiction. In this section, the NPRM also seeks comment on whether the 8th Circuit holding in *Iowa Utilities Board* v. *FCC* requires the assignment of all costs associated with the provision of local exchange service to the intrastate jurisdiction.

6. Finally, the NPRM requests comment regarding changes to the separations rules that may be necessary as a result of the *Universal Service Order* and the Communications Assistance for Law Enforcement Act (CALEA).

Paperwork Reduction Act

7. 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, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Notice; OMB notification of action is due January 5, 1998. 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: 3060–0233.

Title: Part 36—Separations.

Form No.: N/A.

Type of Review: Revision.

Respondents: Businesses or other for profit.

Number of Respondents: 100.

Estimated Time Per Response: 20 hours.

Total Annual Burden: 2000 hours for proposal only. 63,800 burden hours for all Part 36 requirements.

Estimated costs per respondent: $0.

Needs and Uses: In the Notice of Proposed Rulemaking issued in CC Docket No. 80–286, the Commission initiates a proceeding with the goal of reviewing comprehensively our Part 36 jurisdictional separations procedures to ensure that they meet the objectives of the 1996 Act and to consider changes that may need to be made to the jurisdictional separations process in light of changes in the law, technology, and market structure of the telecommunications industry. The Commission seeks comment on a proposal allowing incumbent LECs to separate joint and common costs on an individual basis. The Commission also seeks comment on whether this proposal should be contingent on an ILEC's showing that competition exists in the local markets for which they seek relaxed separations rules. If such a showing is required, the Commission also seeks comment on what level of competition would be required and what indicators should be used to measure the levels of competition in local markets to ensure that joint and common costs are allocated in a manner that produces just and reasonable rates. The proposed requirement will be used to determine whether competition exists in local markets.

Regulatory Flexibility Analysis

8. This NPRM seeks comment on the extent to which separations rules are required, what standards should be used to evaluate separations proposals, and what changes should be made to our existing separations rules. The NPRM states that we want to adopt rules that are easily interpreted and that will minimize any regulatory burdens on affected parties. Section 603 of the Regulatory Flexibility Act (RFA), as amended,[1] requires an initial Regulatory Flexibility Act Analysis in notice-and-comment rulemaking proceedings unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.''[2]

9. Section 603 of the Regulatory Flexibility Act (''RFA'')[3] requires an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities for rulemakings that are required to have public notice and comment. We have determined that the RFA is inapplicable to this proceeding insofar as it pertains to the Bell Operating Companies and other incumbent local exchange carriers. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA'').[5] Section 121.201 of the Small Business Administration regulations defines a small telecommunications entity in SIC code 4813 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level.[6] Because our proposals concerning the Part 36 separations process will affect all incumbent local exchange carriers providing interstate services, some entities employing fewer than 1500 employees at the holding company level may be affected by the proposals made in this NPRM. However, we do not consider such entities to be ''small entities'' under the RFA because they are either affiliates of large corporations or dominant in their field of operations. Therefore, we do not believe that the proposed rules will affect a substantial number of small entities. Even if small ILECs were ''small entities'' under the SBA, however, we would still certify that no regulatory flexibility analysis is necessary here because none of the proposals in this NPRM, if adopted, would have a significant economic impact (as such term is used in the RFA) on the carriers which must comply with our accounting rules. One of the primary objectives of this proceeding is to seek comment on proposals to simplify the current separations process in an effort to lessen the regulatory burden on carriers in furtherance of a deregulatory national policy framework.

10. We therefore certify, pursuant to section 605(b) of the RFA, that the rules proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the **Federal Register** and will provide a copy of the certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include this certification in the report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act.[7]

Ordering Clause

11. Accordingly, *It Is Ordered* that, pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410 that *Notice Is Hereby Given* of proposed amendments to Part 36 of the Commission's rules, 47 CFR Part 36, as

[1] 5 U.S.C. § 603.

[2] *Id.* at § 605(b).

[3] *See id.* § 603.

[4] *Id.* § 601(6) (adopting 15 U.S.C. § 632(a)(1)).

[5] *Id.* § 632. *See, e.g., Brown Transport Truckload, Inc.* v. *Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

[6] 13 CFR 121.201.

[7] 5 U.S.C. § 801(a)(1)(A).

described in this *Notice of Proposed Rulemaking.*

12. *It Is Further Ordered* that, pursuant to section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), the proposals set forth in the Notice of Proposed Rulemaking are hereby referred to the Federal-State Joint Board established in CC Docket No. 80–286 for preparation of a recommended decision.

13. *It Is Further Ordered,* that a copy of all filings in this proceeding shall be served on each of the appointees and staff personnel on the attached service list.

List of Subjects in 47 CFR Part 36

Jurisdictional Separations Procedures; Standard Procedures for Separating Telecommunications Property, Costs, Revenues, Expenses, Taxes and Reserves for Telecommunications Companies.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment—Service List: 80–286 Separations Federal-State Joint Board

The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, 1919 M Street N.W.—Room 814, Washington, D.C. 20554, 202–418–1000

The Honorable Rachelle B. Chong, Commissioner, Federal Communications Commission, 1919 M Street N.W.—Room 844, Washington, D.C. 20554, 202–418–2200

The Honorable Susan Ness, Commissioner, Federal Communications Commission, 1919 M Street N.W.—Room 832, Washington, D.C. 20554, 202–418–2100

The Honorable Cheryl L. Parrino, Chair, Wisconsin Public Service Commission, Post Office Box 7854, Madison, WI 53707–7854

The Honorable David W. Rolka, Commissioner, Pennsylvania Public Utility Commission, North Office Building—Room 110, Commonwealth Avenue and North Street, Harrisburg, PA 17105

The Honorable Joan H. Smith, Commissioner, Oregon Public Utility Commission, 550 Capitol Street, N.E., Salem, OR 97310

The Honorable Thomas L. Welch, Chairman, Maine Public Utilities Commission, 242 State Street, State House Station 18, Augusta, ME 04333

Joint Board Staff

Debra M. Kriete, Pennsylvania Public Utility Commission, North Office Building—Room 110, Commonwealth Avenue and North Street, Harrisburg, PA 17105–3265

Steve Burnett, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 257, Washington, D.C. 20036

Connie Chapman, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 258H, Washington, D.C. 20036

Sandy Ibaugh, Indiana Utility Regulatory Commission, 302 W. Washington, Suite E–306, Indianapolis, IN 46204

Jonathon Lakritz, California Public Utilities Commission, California State Building 505 Van Ness Avenue, San Francisco, California 94102

Samuel Loudenslager, Arkansas Public Service Commission, 1000 Center Street, Little Rock, AR 72203

Chuck Needy, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 812, Washington, D.C. 20036

Paul Pederson, Missouri Public Service Commission, Post Office Box 360, Jefferson City, MO 65102

Scott Potter, Public Utilities Commission of Ohio, 180 E. Broad St., 3rd Fl., Columbus, OH 43215

James Bradford Ramsay, Assistant General Counsel, National Association of Regulatory Utility Commissioners, 1102 ICC Building, Constitution Avenue & 12th Street, N.W., Post Office Box 684, Washington, D.C. 20044–0684

Jeffrey J. Richter, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, WI 53707–7854

Mike Sheard, Montana Public Utilities Commission, 1701 Prospect Ave., P.O. Box 202601, Helena, MT 59620

Kaylene Shannon, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 200H, Washington, D.C. 20036

Joel B. Shifman, Maine Public Utilities Commission, State House Station #18, Augusta, ME 04333

Fred Sistarenik, State Joint Board Staff Chair, New York State Department of Public Service, Communications Division, Three Empire State Plaza, Albany, New York 12223–1350

Cynthia Van Landuyt, Oregon Public Utility Commission, 550 Capitol St. NE, Salem, OR 97310

Lynn Vermillera, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 200E, Washington, D.C. 20036

John Wobbleton, Federal Communications Commission, Common Carrier Bureau—Accounting & Audits Div., 2000 L Street, N.W.—Room 257, Washington, D.C. 20036

[FR Doc. 97–29246 Filed 11–4–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 102997A]

RIN 0648-AK13

Fisheries of the Exclusive Economic Zone Off Alaska; Revise Management Authority of Pelagic Shelf Rockfish; Notice of Availability

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 46 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review. This amendment would remove black and blue rockfish from the FMP. The State of Alaska would then assume management of those species. This action is necessary to allow the State of Alaska to implement more responsive, regionally based, management of these species than is currently possible under the FMP. NMFS is requesting comments from the public on the proposed amendment, copies of which may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on Amendment 46 must be submitted by January 5, 1998.

ADDRESSES: Comments on the FMP amendment should be submitted to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 46 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and related economic analysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a document in the **Federal Register** that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendment 46 to the FMP.

Amendment 46 was adopted by the Council at its June 1997 meeting. It would remove black rockfish (*Sebastes melanops*) and blue rockfish (*Sebastes mystinus*) from the FMP and allow the State of Alaska to extend its management authority for these species into Federal waters. This action would allow the State of Alaska to implement small area harvest guidelines, developed by using more appropriate sampling methodologies than are currently used under Federal management. This action is necessary to prevent possible overexploitation and localized depletion of black and blue rockfish resources.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 46 has been submitted for Secretarial review and approval. The proposed rule to implement this amendment is scheduled to be published within 15 days of this document.

Comments received by January 5, 1998, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 46. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 46 or on the proposed rule during their respective comment periods will be addressed in the final rule.

Dated: October 30, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–29284 Filed 11–4–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 214

Wednesday, November 5, 1997

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

Agricultural Marketing Service

[Docket No. TB–97–15]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the Dairy and Tobacco Adjustment Act of 1983 and the Tobacco Inspection Act and the Regulations Governing the Tobacco Standards.

DATES: Comments on this notice must be received by January 5, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact John W. Foster, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 511 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 205–0744 and Fax (202) 205–1191.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements for 7 CFR part 29.

OMB Number: 0581–0056.

Expiration Date of Approval: April 30, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. Provision is also made for interested parties to request inspection and grading services on an as needed basis. Also, the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) authorizes the Secretary to inspect all tobacco offered for importation into the United States for grade and quality except cigar and oriental tobacco which must be certified by the importer as to kind and type, and in the case of cigar tobacco, that such tobacco will be used solely in the manufacture of cigars.

The information collection requirements authorized for the programs under the Tobacco Inspection Act and the Dairy and Tobacco Adjustment Act of 1983 include: applications for inspection of tobacco, applications and other information used in the approval of new auction markets or the extension of services to designated tobacco markets, and information required to be provided in connection with auction sales.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.40 hours per response.

Respondents: Primarily tobacco companies, tobacco manufactures, import inspectors, and small businesses or organizations.

Estimated Number of Respondents: 13,504.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 5,569.

Comments are invited on: (1) 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) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to John W. Foster, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 511 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456 and will be available for the public inspection in Room 511 Annex Building, USDA, AMS, Tobacco Programs, Standardization and Review Branch, 300 12th Street, S.W., Washington, D.C. 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 30, 1997.

William O. Coats,

Acting Deputy Administrator, Tobacco Programs.

[FR Doc. 97–29314 Filed 10–31–97; 4:52 pm]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on November 20 at the Douglas County Library, at 1409 NE Diamond Lake Blvd. in Roseburg, Oregon. The meeting will begin at 9:00 a.m. and continue until 5:00 p.m. Agenda items to be covered include: (1) Survey and Manage requirements of the Northwest Forest Plan; (2) Province monitoring priorities; (3) Forest health issues; (4) Report from Aquatic Conservation Subcommittee; (5) Report from local BLM and Forest Service on local issues; and (6) Public comment. All Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541–858–2322.

Dated: October 27, 1997.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 97–29186 Filed 11–4–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Deposit of Biological Materials.

Form Number(s): None.

Agency Approval Number: 0651–0022.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 3,301 hours.

Number of Respondents: Approximately 3,300.

Avg. Hours Per Response: 1 hour for deposits of biological material and 5 hours for depositories seeking PTO recognition.

Needs and Uses: Every patent must include a written description of the invention sufficient to enable a person to make and use the invention. When the invention involves a biological material, sometimes words cannot sufficiently describe how to make and use the invention in a reproducible manner. In such cases, the biological material must be deposited in a depository so that the public can obtain samples. Also, the patent rules contain a provision on how to be designated as a depository. PTO determines the suitability of a depository based on its administrative and technical competence.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions, and Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a patent.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: October 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–29204 Filed 11–4–97; 8:45 am]

BILLING CODE: 3510–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 930]

Approval of Manufacturing Activity Within Foreign-Trade Zone 147, York, Pennsylvania; Precision Components Corporation (Inc.) (Nuclear Fuel Containment Vessels)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, has requested authority under § 400.28(a)(2) of the Board's regulations on behalf of Precision Components Corporation (Inc.), to manufacture nuclear fuel containment vessels under zone procedures within FTZ 147, York, Pennsylvania (filed 9–24–96; FTZ Doc. 69–96, 61 FR 51405, 10–2–96);

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied and that the proposal is in the public interest;

Now, Therefore, the Board hereby approves the request subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of October 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 97–29297 Filed 11–4–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102197C]

Endangered Species; Permits

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

ACTION: Issuance of modification 1 to permit 992.

SUMMARY: Notice is hereby given that NMFS has issued a modification to a permit to California State University at Chico, CA (CSU) that authorizes a take of an endangered anadromous fish species for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Protected Species Division, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 (707–575–6050).

FOR FURTHER INFORMATION CONTACT: Lisa Holsinger, Protected Species Division, Santa Rosa, CA (707–575–6064).

SUPPLEMENTARY INFORMATION: The modification to a permit was issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Modification 1 to permit 992 was issued to CSU on October 3, 1997. Permit 992 authorizes CSU an annual take of juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with scientific research. For modification 1, CSU is authorized to use electrofishing gear in sampling activities aimed at capturing juvenile salmon in six non-natal rearing streams in the Central Valley. In addition, CSU is

authorized to collect non-lethal, caudal fin tissue samples from ESA-listed fish and to conduct genetic analyses of the fin tissue. Issuance of the permit modification will not result in an increase in the number of ESA-listed winter-run chinook salmon authorized to be captured and handled by permit 992. Modification 1 is valid for the duration of permit 992. Permit 992 expires on June 30, 1999.

The modification to a permit, as required by the ESA, was based on a finding that the action: (1) Was requested/proposed in good faith, (2) will not operate to the disadvantage of the endangered species that is the subject of the permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: October 29, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29282 Filed 11–4–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102397A]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1061, 1062, 1085).

SUMMARY: Notice is hereby given that the California Department of Forestry and Fire Protection (CDF), in Santa Rosa, CA, Georgia-Pacific West Inc. (GPWI), in Fort Bragg, CA, and ENTRIX, in Walnut Creek, CA, have applied in due form for permits authorizing takes of a threatened species for scientific research purposes.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before December 5, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

Written comments or requests for a public hearing should be submitted to the Protected Species Division in Santa Rosa, CA.

FOR FURTHER INFORMATION CONTACT: Thomas Hablett, Protected Resources Division (707–575–6066).

SUPPLEMENTARY INFORMATION: CDF, GPWI and ENTRIX request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

CDF (1061) requests a five-year permit for takes of juvenile, threatened, southern Oregon/northern California coast coho salmon (*Oncorhynchus kisutch*) associated with monitoring projects in coastal streams within the Evolutionarily Significant Unit (ESU). The studies consist of coho salmon distribution and abundance surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

GPWI (1062) requests a five-year permit for takes of juvenile, threatened, southern Oregon/northern California coast coho salmon (*Oncorhynchus kisutch*) associated with fish population studies on GPWI properties in drainages of the south fork of the Eel River within the ESU. The studies consist of coho salmon distribution and abundance surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

ENTRIX (1085) requests a five-year permit for takes of adult and juvenile, threatened, southern Oregon/northern California coast coho salmon (*Oncorhynchus kisutch*) associated with fish population and habitat studies on the Klamath and Trinity Rivers within the ESU. The studies consist of five assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) habitat quality evaluation, (4) spawner surveys, and (5) tissue removal for genetic analysis. ESA-listed fish are proposed to be observed or captured, anesthetized, handled (measured and tissue samples taken), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 27, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29283 Filed 11–4–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Poland

October 30, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 5, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 435 is being increased for swing and carryover. The limit for Category 410 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 55974, published on October 30, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 30, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 25, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 5, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410	2,604,962 square meters.
435	14,769 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29247 Filed 11–4–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, And OMB Number: Air Force Academy Request for Secondary School Transcript; USAFA Form 148; OMB Number 0701–0066.

Type of Request: Reinstatement.

Number of Respondents: 3,874.

Responses Per Respondent: 1.

Annual Responses: 3,874.

Average Burden Per Response: 27 minutes.

Annual Burden Hours: 1,743.

Needs and Uses: The information collection requirement is necessary to obtain data on a candidate's family and personal background for use in determining eligibility and selection to the Air Force Academy. The information collected under the authority of 10 U.S.C. 9346. The respondents are students applying for admission to the U.S. Air Force Academy. Each student's high school athletic, nonathletic, and extracurricular activities are reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 30, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29177 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Air Force Academy Candidate Personal Data Record; USAFA Form 146; OMB Number 0701–0064.

Type of Request: Reinstatement.

Number of Respondents: 4,176.

Responses per Respondent: 1.

Annual Responses: 4,176.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 2,088.

Needs and Uses: The information collection requirement is necessary to obtain data on a candidate's family and personal background for use in determining eligibility and selection to the Air Force Academy. The information collected under the authority of 10 U.S.C. 9346. The respondents are students applying for admission to the U.S. Air Force Academy. Each student's high school athletic, nonathletic, and extracurricular activities are reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 30, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29178 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review, Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Air Force Academy Candidate Activities Record; USAFA Form 147; OMB Number 0701–0063.

Type of Request: Reinstatement.

Number of Respondents: 4,004.

Responses Per Respondent: 1.

Annual Responses: 4,004.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 3,003.

Needs and Uses: The information collection requirement is necessary to obtain data on a candidate's family and personal background for use in determining eligibility and selection to the Air Force Academy. The information collected under the authority of 10 U.S.C. 9346. The respondents are students applying for admission to the U.S. Air Force Academy. Each student's high school athletic, nonathletic, and extracurricular activities are reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 30, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29179 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, December 9, 1997.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29180 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Friday, December 12, 1997.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29181 Filed 11–04–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, November 18, 1997.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29182 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Election Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, December 10, 1997.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Department in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: October 30, 1997.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 97–29183 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DOD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on November 3, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0900–1700, November 3, 1997 in order for the Panel to discuss classified material.

DATES: November 3, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0900–1700 on November 3. During the closed session the Panel will hear the NDP staff presentations on Cost & Budget Issues, Reserves, Alliances and Report Outline Review on Infrastructure at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

This Notification also is written verification that the Panel was unable to provide notice of this meeting 15 days prior to the date of the meeting, due to the scheduling conflicts with the Program Managers who will brief the Panel.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: October 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29184 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on November 13 and 14, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public from 0900–1700, November 13 and 14, 1997 in order for the Panel to discuss classified material.

DATES: November 13 and 14, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

Proposed Schedule and Agenda

The National Defense Panel will meet in closed session from 0900–1700 on November 13 and 14. During the closed session on November 13th from 0900–1700 the NDP staff will present the Panel with status updates on Counterproliferation, WMD Deterrence, and Humint at the Crystal Mall 3 office. On November 14th from 0900 to 1700 the NDP will hear staff presentations on Nuclear Policy, Issue Brief on Industrial Base and the Rollout Update at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION: Please contact the National Defense Panel at (703) 602–4176/6.

Dated: October 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29185 Filed 11–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Correction; Notice.

SUMMARY: On October 7, 1997, the Education Department published in the **Federal Register** (62 FR 52429) a notice announcing direct grant programs and fellowship programs under which the Secretary has invited or expects to invite applications for new awards for fiscal year 1998. This notice corrects a telephone number listed in Chart 5 of the October 7 notice. On page 52441, the telephone number (202) 205–9182 for the Grants and Contracts Services Team, Office of Special Education and Rehabilitative Services, Office of Special Education Programs is corrected to (202) 260–9182.

FOR FURTHER INFORMATION CONTACT: Art Stewart, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3652, ROB–3, Washington, DC 20202–4248. Telephone: (202) 708–8515. Internet: (Arthur—Stewart@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: October 30, 1997.

Donald Rappaport,

Chief Financial and Chief Information Officer.

[FR Doc. 97–29199 Filed 11–4–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on June 6, 1997, an arbitration panel rendered a decision in the matter of *Richard Fracasso* v. *Rhode Island Department of Human Services, Office of Rehabilitation Services (Docket No. R–S/94–2).* This panel was convened by the U. S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Richard Fracasso.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Mr. Richard Fracasso, a blind licensee, completed the Randolph-Sheppard vending facility training program under the auspices of the Rhode Island Department of Human Services, Office of Rehabilitation

Services, the State licensing agency (SLA).

Mr. Fracasso was placed on the Graduate Permanent Transfer Seniority List, effective November 22, 1991. The SLA, according to section IX of its Rules and Regulations governing the Randolph-Sheppard vending program in Rhode Island, maintains two lists regarding vendor transfer and promotions. One list is a Vendor Permanent Transfer Seniority List, which ranks licensed operators based on the length of time the licensee actually has operated a vending facility. The other is a Graduate Permanent Transfer Seniority List, which ranks graduate licensees awaiting a vending facility location by seniority, based upon each person's graduation date from the vending facility training program.

In May 1993, the Woonsocket Post Office vending facility became open for bid, and complainant decided not to submit a bid for this location. Also, no other licensed operator or licensee awaiting a vending assignment submitted a bid at the time of the bid closing. Subsequently, the SLA assigned another recent licensee to this location, which placed the new graduate on the Vendor Permanent Transfer Seniority List.

In July 1993 the Providence Health Lab came up for bid, and Mr. Fracasso submitted his bid for this location. The official bidding period closed, and the SLA notified complainant that the Providence Health Lab had been awarded to the licensee who had been assigned to operate the Woonsocket Post Office.

Mr. Fracasso requested and received on December 16, 1993, a State fair hearing regarding the placement of the other new licensee at the Providence Health Lab. The complainant alleged that the SLA illegally awarded that location to the other vendor since the other new vendor never actually operated the Woonsocket Post Office vending facility. Mr. Fracasso further alleged that the SLA's action in placing the new graduate on the Vendor Permanent Transfer Seniority List gave that vendor an unfair advantage over complainant in his bid on the Providence Health Lab.

On March 4, 1994, the Hearing Officer issued his opinion affirming the SLA's decision to place the other new graduate at the Woonsocket Post Office since no one else from either of the two transfer seniority lists had placed a bid on the facility. The Hearing Officer also concluded that ''when the health laboratory vending facility became subject to a bid solicitation, the award was granted to the most senior vendor who bid. The most senior vendor who bid was the recent graduate from the training activity who had been awarded the vending facility in Woonsocket, R.I. on July 12, 1993.''

The SLA adopted the Hearing Officer's decision as final agency action, and it was this decision that Mr. Fracasso sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing was held on December 4, 1995, concerning this complaint. On December 20, 1996, the panel reconvened, one panel member dissenting, at the request of the complainant to hear additional evidence.

The issues heard by the arbitration panel were—(1) Whether the SLA violated its bidding procedures in a manner that adversely affected Mr. Fracasso; (2) If the SLA were found in violation of its bidding procedures, whether an arbitration panel convened by an administrative agency of the Executive branch of government could order a State to pay money damages to a private individual under the Randolph-Sheppard Act; and (3) If the SLA were found in violation of its bidding procedures, what other remedies, if any, would be appropriate to redress the deprivation caused by the SLA of the complainant's enforceable rights.

Arbitration Panel Decision

Based upon the evidence presented at the hearing on this matter, the majority of the arbitration panel concurred with the SLA's acknowledgement that it had violated its own bidding procedures in awarding the Providence Health Lab vending facility to another vendor.

While admitting the violation, the SLA stated that the violation was not intentional and was a result of a bureaucratic error. The complainant, on the other hand, argued that the violation was intentional and was specifically directed in favor of the other vendor. On this point, the majority of the panel ruled that there was no compelling evidence presented to support the complainant's contention that the SLA intentionally favored the other vendor.

The panel next took up the issue of what remedies, if any, exist once a finding has been made that the SLA violated its bidding procedures.

The majority of the panel ruled, after extensive review of case law, that any award that required the State of Rhode Island to compensate Mr. Fracasso for misdeeds committed against him is barred by the sovereign immunity principle contained in the Eleventh Amendment to the United States Constitution despite the fact that the SLA had violated its own bidding procedures.

The panel noted further that the United States Court of Appeals for the Eighth Circuit in *McNabb* v. *U.S. Department of Education*, 862 F.2d 681 (8th Cir. 1988), has allowed prospective damages—those that accrue after initiation of the arbitration—but not retrospective damages. However, the panel found that the complainant did not continue to incur damages as a result of the SLA's violation of the Act. In addition, the panel found that, while the complainant could be awarded costs under section 107d–2(d) of the Act, these costs did not include attorney's fees.

Concerning the remedy for the SLA's violation affecting complainant's seniority rights, the majority of the arbitration panel ruled that the Eleventh Amendment presented no bar because payment of money damages was not involved. The majority of the panel found that complainant was entitled to be reinstated to his appropriate place on the SLA's seniority list, and the SLA was directed to take any and all steps necessary to reinstate him.

One panel member dissented from the majority opinion.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: October 31, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–29270 Filed 11–4–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy

ACTION: Notice of open meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATE: Wednesday, November 19, 1997: 6:00 p.m.–8:56 p.m. (Mountain Daylight Time).

ADDRESSES: Los Duranes Community Center, 2920 Leopoldo NW, Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager,

Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m.—Call to Order/Roll Call—Jamie Wells, Chair
6:02 p.m.—Public Comments
6:12 p.m.—Approval of Agenda
6:14 p.m.—Approval of 10/15/97 Minutes
6:19 p.m.—Chair's Report—Jamie Wells
6:24 p.m.—1. DOE Quarterly Meeting
7:24 p.m.—Break
7:34 p.m.—2. Self-evaluation Committee Report—Yugal Behl, Committee Chair
8:34 p.m.—3. 501(c)3 Non-Profit Status Report—Paul Catacosinos
8:39 p.m.—4. New/Other Business
8:49 p.m. Public Comments
8:54 p.m.—Announcement of Next Meeting—January 21, 1998

A final agenda will be available at the meeting Wednesday, November 19, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on October 31, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–29260 Filed 11–4–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub.L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, November 6, 1997: 6 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall, Lower-level Multi-purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. How plutonium moves in the natural environment at Rocky Flats. Scientists are currently studying this subject and hope to be able to provide answers about the likelihood of radioactive materials migrating into the community from the Rocky Flats site.

2. Highlight the proposed decommissioning plan for the first plutonium-contaminated building to be taken down at Rocky Flats. The cleanup and demolition process for this building is scheduled to begin early in 1998.

3. Administrative Business.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on October 31, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–29261 Filed 11–4–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act, the Industry Advisory Board to the International Energy Agency (IEA) will meet November 12–13, 1997, at the IEA's headquarters in Paris, France to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the Standing Group on the Oil Market and at a meeting of the SEQ.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: Subject to timely enactment of legislation to

reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act (EPCA), the following meeting notices are provided, in accordance with section 252(c)(1)(A)(i) of the EPCA:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on November 12, 1997, at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, beginning at 2:30 p.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and Standing Group on the Oil Market (SOM) which is scheduled to be held at the aforesaid location on the aforesaid date. The agenda for the meeting is under the control of the SEQ and the SOM. It is expected that they will adopt the following agenda:

1. Current Oil Market Situation
2. The 50th Anniversary of the Marshall Plan and Evolution of Oil Markets
   —Introduction
   —The Effect of the Marshall Plan on Oil Prices: Has the Oil Market Really Changed?
   —50 Years Dealing with Cycles of Optimism and Pessimism
3. The Next 50 Years? Report on the IEA Workshop on Long-Term Oil Supply
4. Oil Market Dynamics in Supply Emergencies

II. A meeting of the IAB will be held on November 13, 1997, at the headquarters of the IEA, beginning at approximately 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the SEQ which is scheduled to be held at the IEA headquarters on November 13, including a preparatory encounter among company representatives from approximately 9:15 a.m. to 9:30 a.m. The agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ's agenda. The agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of Summary Record of the 90th Meeting
3. SEQ Work Program
   —The 1998 SEQ Work Program
   —Organization of Emergency Response Exercise 1998
4. Policy and Legislative Developments in Member Countries
   —Energy Policy and Conservation Act (EPCA)
   —Report on DOE Strategic Petroleum Reserve Study
   —Sales by some Member Countries of Government-held stocks
   —Other Country Developments
5. Industry Advisory Board
   —Current and Planned IAB Activities
6. Long Term Strategy Issues
   —Agenda of Seminar on IEA Emergency Reserve Strategy
   —Future Strategies for IEA Emergency Reserves
7. Emergency Response Reviews of IEA Countries
   —Belgium
   —Netherlands
   —Norway
   —Sweden
   —Hungary
   —Updated Schedule of Reviews
8. Review of SEQ Work Procedures
   —Results of Survey
   —Summary and Implementation
9. Emergency Reserve Situation of IEA Countries
   —Emergency Reserve and Net Import Situation of IEA Countries on July 1, 1997
   —Report to the Governing Board on the IEA Emergency Reserve Issues
10. Emergency Response Issues in IEA Candidate Countries
   —The Emergency Reserve Situation of IEA Candidate Countries
11. Emergency Data System and Related Questions
   —Monthly Oil Statistics (MOS) June 1997
   —MOS July 1997
   —Base Period Final Consumption (PFC)—Q396–Q297
   —Quarterly Oil Forecast—Q397–Q298
12. Emergency Reference Guide
   —Update of Emergency Contact Points List
13. Any Other Business
   —1998 Non-Member Countries/SEQ Joint Activities relating to Emergency Response Issues
   —Report by Mr. Masuda on Japan National Oil Company 30th Anniversary Seminar
   —Other issues

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), these meetings are open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ and the SOM, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, the SOM or the IEA.

Issued in Washington, DC, October 30, 1997.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 97–29263 Filed 11–4–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed on or before December 5, 1997. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory

Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION:

The energy information collection submitted to OMB for review was:

1. EIA–767, ''Steam-Electric Plant Operation and Design Report''

2. Energy Information Administration, Office of Coal, Nuclear, Electric and Alternate Fuels (additional sponsors are the Environmental Protection Agency and DOE's Office of Fossil Energy); OMB Nos. 1901–0298, and 2080–0018; Reinstatement of a Previously Approved Collection; Mandatory

3. The Form EIA–767 is a consolidation of data requirements of EPA and DOE. Data are collected annually from steam-electric power plants of 10 (MW) or more. Data on air emission and water quality are used for economic, regulatory, and environmental analysis. Power plants between 10 MW and 100 MW file only pages 6, 13, and 14 fuel and flue gas desulfurization data.

4. Business or other for-profit; Federal Government; State, Local or Tribal Government

5. 52,148 hours (60.85 hrs. × 1 response per year × 857 respondents)

Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, D.C., October 29, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–29262 Filed 11–4–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4273–000]

Cargill-IEC, L.L.C.; Notice of Issuance of Order

October 31, 1997.

Cargill-IEC, L.L.C. (Cargill-IEC) filed an application for authorization to sell electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Cargill-IEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Cargill-IEC. On October 17, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 17, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Cargill-IEC 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.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Cargill-IEC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Cargill-IEC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Cargill-IEC's issuances of securities or assumptions of liabilities* * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29251 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4335–000]

GEN–SYS Energy; Notice of Issuance of Order

October 31, 1997.

GEN–SYS Energy (GEN–SYS) filed an application for authorization to engage in the wholesale sale of electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, GEN–SYS requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by GEN–SYS. On October 17, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 17, 1997 Order granted the request for blanket approval under part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by GEN–SYS 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.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, GEN–SYS is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, indorser, surety or otherwise in respect to any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of GEN–SYS, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interest will be adversely affected by continued Commission approval of

GEN–SYS' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29256 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3583–000 and ER97–4084–000]

GS Electric Generating Cooperative, Inc.; Denver City Energy Associates, L.P.; Notice of Issuance of Order

October 31, 1997.

GS Electric Generating Cooperative, Inc. (GS Electric) and Denver City Energy Associates, L.P. (Denver City) filed respective applications for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, GS Electric and Denver City requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by GS Electric and Denver City. On October 17, 1997, the Commission issued an Order Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceedings.

The Commission's October 17, 1997 Order granted the request for blanket approval under part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by GS Electric and Denver City 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.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, GS Electric and Denver City are hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of GS Electric and Denver City, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of GS Electric's and Denver City's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29250 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4222–000]

Iowa Power Partners I, L.L.C.; Notice of Issuance of Order

October 31, 1997.

Iowa Power Partners I, L.L.C. (Iowa Partners) filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Iowa Partners requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Iowa Partners. On October 20, 1997, the Commission issued an Order Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 20, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Iowa Partners 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.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Iowa Partners is hereby authorized, pursuant to section 204 of the FPA, to issue securities and to assume obligations or liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Iowa Partners, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Iowa Partners' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 19, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29254 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EP98–218–000]

Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Notice of Filing

Take notice that on October 16, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy) filed amendments to the GPU Energy Operating Capacity and/or Energy Sales Tariff, FERC Electric Tariff, Original Volume No. 1. GPU Energy requests an effective date of November 1, 1997, for the amendments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before November 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29191 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–51–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 30, 1997.

Take notice that on October 28, 1997, Koch Gateway Pipeline Company, (Applicant), P.O. Box 1478, Houston, Texas 77251–1478, filed under Sections 157.205 and 157.216(b) of the Commission's Regulations to abandon one 2-inch delivery tap on its index 276 at station No. 3193+44 in Harrison County, Mississippi all as more fully described in the request which is on file with the Commission and open to public inspection. The affected end-user is a customer of Entex, Inc., (Entex) a local distribution company. Entex and the end user have agreed to the proposed abandonment of facilities and service.

Applicant states that it is taking this action to implement the Order issued in Docket No. CP94–75–000 in which Applicant was directed to abandon by sale, in place to Koch Pipeline, Inc. its transmission and looping facilities referred to as Index 276. Applicant will make prior notice filings to abandon delivery taps on Index 276. This application is one of those filings.

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 § 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 therefore, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29190 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4345–000]

OGE Energy Resources, Inc.; Notice of Issuance of Order

October 31, 1997.

OGE Energy Resources, Inc. (OGE Energy) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, OGE Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by OGE Energy. On October 17, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 17, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by OGE Energy 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.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, OGE Energy is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations or liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of OGE Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of OGE Energy's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29253 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2687–014]

Pacific Gas & Electric Company; Notice of Site Visit

October 30, 1997.

Take notice that the Commission staff will hold a site visit with Pacific Gas & Electric Company (PG&E), the licensee for the Pit 1 Hydroelectric Project No. 2687. The project is located near the towns of Fall River Mills, McArthur, and Burney, California. The site visit will be held on Thursday, November 19, 1997, from 8:00 a.m. to 4:00 p.m.

The purpose of the site visit is to observe the project area and project facilities related to the relicensing issues of the project. All interested individuals, organizations, and agencies are invited to attend the site visit.

Participants will meet at 8:00 a.m. at the PG&E headquarters in Burney, on Black Ranch Road, off of Route 299. Participants should provide their own transportation for the site visit. Further, participants should bring their own lunches for the day-long site visit.

For further information, please contact Doug Hjorth at (617) 444–3330 ext. 283.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29192 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3056–000]

R. Hadler and Company, Inc.; Notice of Issuance of Order

October 31, 1997.

R. Hadler and Company, Inc. (Hadler) filed an application for authorization to engage in the wholesale sale and brokering of capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Hadler requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Hadler. On October 17, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 17, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Hadler should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Hadler is hereby authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Hadler, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Hadler's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29255 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3954–000]

Unicom Power Marketing, Inc.; Notice of Issuance of Order

October 31, 1997.

Unicom Power Marketing, Inc. (Unicom) filed an application for authorization to engage in the wholesale sale of electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Unicom requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Unicom. On October 17, 1997, the Commission issued an Order Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 17, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Unicom 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.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Unicom is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Unicom, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Unicom's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29252 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–151–000, et al.]

Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 30, 1997.

Take notice that the following filings have been made with the Commission:

1. Bangor Hydro-Electric Company

[Docket No. ER98–151–000]

Take notice that on October 14, 1997, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with the New York State Electric & Gas Corporation.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Old Dominion Electric Cooperative v. Public Service Electric and Gas Company

[Docket No. EL98–6–000]

Take notice that on October 27, 1997, Old Dominion Electric Cooperative (ODEC) filed a Complaint against Public Service Electric and Gas Company (PSE&G). ODEC requests that the Commission: (1) modify the 1992 Agreement for a bundled ten year sale of 150 MW by PSE&G to ODEC in order to unbundle and remove the transmission cost component in PSE&G's bundled capacity rates; (2) transfer delivery of the sale transaction from the 1992 Agreement on a bundled basis to the presently-effective and applicable PJM open access Tariff; (3) order a reduction in PSE&G's capacity rates to ODEC to reflect a change in circumstances in PSE&G's cost of service to ODEC; and (4) grant ODEC's motion to summarily reject a surcharge billed to ODEC by PSE&G under the 1992 Agreement that is unauthorized by such.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Corporation

[Docket No. ER98–152–000]

Take notice that on October 14, 1997, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Aquila Power Corporation under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on October 13, 1997.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Duquesne Light Company

[Docket No. ER98–153–000]

Take notice that on October 15, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated October 1, 1997, with NP Energy under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds NP Energy as a customer under the Tariff. DLC requests an effective date of October 1, 1997, for the Service Agreement.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER98–154–000]

Take notice that on October 15, 1997, Arizona Public Service Company (APS or Company) tendered for filing Cancellation of Wholesale Power Agreement between and the Arizona Power Authority (APA) (APS–FPC Rate Schedule No. 59).

APS requests that this cancellation become effective September 30, 1997.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER98–155–000]

Take notice that on October 15, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3, with Koch Energy Trading Inc., (Koch).

A copy of this filing has been served on the Arizona Corporation Commission and Koch.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER98–156–000]

Take notice that on October 15, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Pacific Gas & Electric Company, Cook Inlet Energy Supply LP, Entergy Power Marketing Corp., and Tractebel Energy Marketing, Inc.

A copy of this filing has been served on Pacific Gas & Electric Company, Cook Inlet Energy Supply LP, Entergy Power Marketing Corp., Tractebel Energy Marketing, Inc., the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The Detroit Edison Company

[Docket No. ER98–157–000]

Take notice that on October 15, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4, together with 1997 Electric Supply Agreements detailing the terms and conditions (the Electric Supply Agreements) under which such transactions will take place, between Detroit Edison and the following Customers:

Customer	Date of service agreement
City of Croswell, Michigan	Aug. 28, 1997.
Village of Sebewaing, Michigan.	Mar. 12, 1997.
Thumb Electric Cooperative.	May 21, 1997.

The parties have not engaged in any transactions under the Service Agreements as of the date of this filing. The Electric Supply Agreements provide that service will commence on November 1, 1997. Detroit Edison requests that the Service Agreements be made effective as of November 1, 1997.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER98–159–000]

Take notice that on October 15, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements to provide umbrella short-term Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Pacific Gas & Electric Company, Cook Inlet Energy Supply, LP, and Salt River Project.

A copy of this filing has been served on Pacific Gas & Electric Company, Cook Inlet Energy Supply, LP, and Salt River Project, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric and Gas Company

[Docket No. ER98–160–000]

Take notice that on October 15, 1997, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to NUI Energy Brokers, Inc. (NUI) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 16, 1997.

Copies of the filing have been served upon NUI and the New Jersey Board of Public Utilities.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. The Dayton Power and Light Company

[Docket No. ER98–161–000]

Take notice that on October 15, 1997, The Dayton Power and Light Company (Dayton), submitted a service agreement and supplement to the service agreement establishing Constellation Power Source as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreement. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon CPS and the Public Utilities Commission of Ohio.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER98–163–000]

Take notice that on October 15, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Western Resources, Inc., under the Open Access Transmission Tariff to

Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Western Resources, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER98–164–000]

Take notice that on October 15, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with Carolina Power and Light, Western Resources, Inc., PECO Energy Company and Citizens Power Sales under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Carolina Power and Light, Western Resources, Inc., PECO Energy Company and Citizens Power Sales, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER98–165–000]

Take notice that on October 15, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm Point-To-Point Transmission Service Agreements with Kansas City Power & Light Company and Western Resources (Western) and Short-Term Firm Point-To-Point Transmission Service Agreements with Western and PacifiCorp's Merchant Function under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Indiana Gas and Electric Company

[Docket No. ER98–166–000]

Take notice that on October 15, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing three (3) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. Proliance Energy, LLC
2. QST Energy Trading, Inc.
3. Southern Illinois Power Cooperative

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER98–167–000]

Take notice that on October 15, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to EnerZ Corporation (EnerZ), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 16, 1997.

Copies of the filing have been served upon EnerZ and the New Jersey Board of Public Utilities.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Company

[Docket No. ER98–168–000]

Take notice that on October 15, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Sonat Power Marketing L.P. (Sonat), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 16, 1997.

Copies of the filing have been served upon Sonat and the New Jersey Board of Public Utilities.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Indiana Gas and Electric Company

[Docket No. ER98–169–000]

Take notice that on October 15, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing three (3) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Proliance Energy, LLC
2. QST Energy Trading, Inc.
3. Southern Illinois Power Cooperative

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER98–170–000]

Take notice that on October 15, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and CNG Retail Services Corporation (Peoples Plus) (CRS), dated October 14, 1997. This Service Agreement specifies that CRS has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.,* Docket No. ER95–276–000 and allows GPU Energy and CRS to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 14, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the

Federal Energy Regulatory Commission, 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 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29249 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Major License

October 30, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* 11157–001.

c. *Dated filed:* October 28, 1994, and amended on October 25, 1996.

d. *Applicant:* Rugraw, Inc.

e. *Name of Project:* Lassen Lodge.

f. *Location:* On the South Fork Battle Creek, in Tehama County, CA.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. James B. Tompkins, Tompkins and Associates, 16464 Plateau Circle, Redding, CA 96001, (916) 243–0103.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. The project would consist of: (1) A new 5-foot-high, 80-foot-long reinforced concrete with existing natural features (large boulders, etc.) diversion structure about 1,800 feet upstream of the Old Highway No. 36 bridge, with an overflow crest elevation of 4,310.5 feet mean sea level (msl) impounding a small pool with negligible capacity with an operating surface elevation of 4,310 feet msl; (2) an intake structure with trashracks, fish screens, and fish passage facilities at the south embankment; (3) a 19,200-foot-long underground penstock composed of a low pressure polyethylene 42-inch-diameter section and high-pressure steel 36-inch-diameter section; (4) a powerhouse with an installed capacity of 7 megawatts; (5) a 10-mile-long, 60-kilovolt transmission line; (6) a 55-foot-long reinforced concrete box culvert tailrace; and (7) other appurtenances.

k. Deadline for protests, interventions, competing applications and notices of intent: January 20, 1998.

l. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph D8.

m. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

n. This notice also consists of the following standard paragraph: A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the application, as amended, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street N.E., Washington D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION''' (2) set forth in the heading the name of the applicant and the project forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29193 Filed 11–4–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5916–9]

Toxic Chemicals; Request for Contractor Access to TSCA CBI; Submission of ICR No. 1250.05 to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Request for Contractor Access to TSCA Confidential Business Information (CBI) (EPA ICR No. 1250.05; OMB Control No. 2070–0075) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on November 30, 1997. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on August 19, 1997 (62 FR 44125). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: *''farmer.sandy@epamail.epa.gov,''* or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1250.05.

ADDRESSES: Send comments, referencing EPA ICR No. 1250.05 and OMB Control No. 2070–0075, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137), 401 M Street, S.W., Washington, DC 20460, and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1250.05; OMB Control No. 2070–0075.

Current Expiration Date: Current OMB approval expires on November 30, 1997.

Title: Request for Contractor Access to TSCA CBI.

Abstract: Certain employees of companies working under contract to EPA require access to confidential business information collected under TSCA authority (''TSCA CBI'') in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA confidential business information, requires that all individuals desiring access to TSCA CBI obtain and annually renew their official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance, primarily the name, Social Security Number and EPA identification badge number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI. EPA will observe strict confidentiality precautions with respect to the information collected on individual employees, based on the Privacy Act of 1974, as outlined in the ICR and in the collection instrument.

Burden Statement: The annual public reporting burden for this collection of information is estimated to be approximately 31 hours per response for an estimated 26 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

Respondents/Affected Entities: Entities potentially affected by this action are those companies working under contract for EPA whose employees need access to TSCA confidential business information to carry out their duties.

Estimated No. of Respondents: 26.

Estimated Total Annual Burden on Respondents: 814 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: There is an increase of 234 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 580 hours currently to an estimated 814 hours. This increase accounts for time that is required to view the TSCA CBI security videotape that was not included in the previous ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: October 30, 1997.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–29289 Filed 11–4–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5917–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Clean Water Needs Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Clean Water Needs Survey, OMB Control Number 2040–0050, expiration date November 30, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260-2740, by email: farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 318.07.

SUPPLEMENTARY INFORMATION:

Title: Clean Water Needs Survey (OMB Control No. 2040–0050; EPA ICR No. 318.07.) expiring 11/30/97. This is a request for extension of a currently approved collection for an inventory and cost estimate of those capital improvements needed to be made to new and existing wastewater treatment plants and collector systems eligible for funding under the Clean Water Act, to meet the requirements under the Clean Water Act. In addition, data collection on abandoned mine runoff is planned as a pilot partial survey for 7 States.

Abstract: The data base for the Clean Water Needs Survey (CWNS) data on Publicly Owned Treatment Works (POTWs, wastewater treatment plants) which is collected by the 50 States and Puerto Rico is being modernized. It has been designed and tested and will be made available to the States to start entering their data and training their staff on the use of the new data base so that the States will be ready in time for the 2000 Clean Water Needs Survey. In addition, data will be collected on the runoff from abandoned mines as a pilot partial survey of 7 States, by those 7 States, to improve the quality of the 2000 CWNS. The States are required to supply this information in order to be eligible for funding for the POTW facilities surveyed under the Clean Water Act and State Revolving Fund. The data is compiled and published every 4 years in a Clean Water Needs Survey, and FOIA requests are answered and extracts of data will be placed on the Internet. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 5/13/97 (62 FR 26303); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 59 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The 50 States and Puerto Rico..

Estimated Number of Respondents: 51.

Frequency of Response: Once in two years.

Estimated Total Annual Hour Burden: 3,025 hours.

Estimated Total Annualized Cost Burden: $90,750.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 318.07 and OMB Control No. 2040–0050 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov) and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 30, 1997.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–29290 Filed 11–4–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5917–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I), 40 CFR part 63, subpart R, OMB Control Number 2060–0325, expiring on December 31, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 5, 1997.

FOR FURTHER INFORMATION CONTACT: For information or a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1659.03.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I), 40 CFR part 63, subpart R, (OMB Control Number 2060–0325; EPA ICR No. 1659.03) expiring on December 31, 1997. This is a request for extension of a currently approved collection.

Abstract: Effective enforcement of this rule is necessary due to the hazardous nature of benzene (a known human carcinogen) and the toxic nature of the other 10 Hazardous Air Pollutants emitted from gasoline distribution facilities. The EPA is charged under section 112 of the Clean Air Act (CAA or Act), as amended, to establish national emission standards for hazardous air pollutants (NESHAP). Section 114 of the Act allows the Administrator to require inspections, monitoring, and entry into facilities to ensure compliance with a section 112 emission standard. Records and reports are necessary to enable the EPA to identify facilities that may not be in compliance with the standards. The information will be used by agency personnel to: (1) identify sources subject to the standards; (2) ensure that leakage emissions from cargo tanks and process piping equipment components (both liquid and vapor) during loading are being minimized; (3) ensure that emission control devices are being properly operated and maintained; and (4) ensure that emissions from storage vessels are minimized and rim seal and fitting defects are repaired on a timely basis. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed

in 40 CFR part 9 and 48 CFR Chapter 15.

The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 18, 1997 (62 FR 33068); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: New and existing bulk gasoline terminals and pipeline breakout stations

Estimated Number of Respondents: 263.

Frequency of Response: 2 plus on occasion.

Estimated Total Annual Hour Burden: 32,575 hours.

Estimated Total Annualized Cost Burden: $850,500.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1659.03 and OMB Control No. 2060–0325 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: October 30, 1997.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–29291 Filed 11–4–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00219; FRL–5734–8]

Grants to Assist States in Implementing a Lead-based Paint Accreditation and Certification Program After Passing Enabling Legislation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Funding Availability (NOFA); solicitation of applications for financial assistance.

SUMMARY: EPA has entered into a Memorandum of Agreement (MOA), and has entered into an interagency agreement, with HUD to administer the remaining funds authorized under section 1011(g) of Title X of the Housing and Community Development Act of 1992. EPA will award grants from these funds under its authority in section 404(g) of the Toxics Substances Control Act (TSCA). This notice announces the availability of $3,548,910 to provide financial assistance to States for purposes of establishing training, accreditation, and certification programs for professionals engaged in lead-based paint activities listed under section 402 of TSCA, as promulgated on August 29, 1996. These grants are restricted to States seeking assistance in establishing a State training, accreditation, and certification program after passing enabling legislation. Although there is no deadline in submitting an application, applicants should note that the funds are limited to $3,548,910. These funds will be awarded to States, Territories and the District of Columbia on a first-come first-served basis. Agency receipt of the application will be logged by recording the date and hour of the day that the appropriate EPA Regional Office receives the application. Applications must be sent by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: For general information, contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm E-543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information, contact the appropriate Regional Primary Lead Contact person listed in Unit IX. of this document.

SUPPLEMENTARY INFORMATION: Title X of the Housing and Community Development Act of 1992, otherwise known as the Residential Lead-based Paint Hazard Reduction Act of 1992, authorized the Secretary of the Department of Housing and Urban Development to provide grants of up to $200,000 to State governments to develop the capacity to carry out the requirements of section 105(b)(16) of the Cranston-Gonzales National Affordable Housing Act and to carry out activities under this section. Section 1011(g) of Title X set aside $3,000,000 for each fiscal year of 1993 and 1994 for the purpose of establishing State training, certification, or accreditation programs that meet the requirements of section 402 of the Toxic Substances Control Act (TSCA) once the State has enacted enabling legislation. HUD identified this money as Category II grants and announced the availability of the first year of the $3,000,000 set aside in the **Federal Register** of June 4, 1993 (58 FR 31848).

HUD had originally estimated that between 15 and 18 grants would be awarded with the FY93 funds. Under that grant cycle, HUD awarded only $2,451,090 to the following 13 States: Arkansas, California, Connecticut, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Ohio, Rhode Island, Vermont, and Virginia. The resulting balance of $548,910 from FY93 combined with $3,000,000 appropriated by Congress in FY94, provides for the total of $3,548,910 in grant dollars to be awarded by EPA under this notification.

Approximately 18 grants of up to $200,000 each will be awarded. Any State that has previously received a Category II Grant from the Department of Housing and Urban Development (HUD) is not eligible to apply for these funds. These States include: Arkansas, California, Connecticut, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Ohio, Rhode Island, Vermont, and Virginia. States that have passed enabling legislation prior to August 29, 1996 may apply after they meet the program elements listed under Appendix E of HUD's Notice of Funding Availability document (58 FR 31848, June 4, 1993.) States that passed enabling legislation after August 29, 1996 must, at a minimum, meet the requirements set forth under the TSCA section 402 final rule which was published on that date.

I. Eligibility

1. *Eligible applicants.* Eligible applicants are the governments of all remaining 37 States that have not already received a grant under this program from HUD, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States that has passed enabling legislation for a State certification program, and that have a currently approved consolidated plan. States will become eligible to apply for Stage One of these grants upon enactment of State certification legislation.

Awards shall be made on a first-come first-served basis in the order of the date an acceptable application is received by the appropriate EPA Regional Office until the money is exhausted. In the event of a tie between two or more States competing for the last grant money to be awarded, the State which passed acceptable legislation first by date will receive the funds.

2. *Eligible activities*—a. All necessary and reasonable costs that directly support the purpose of a Category II Grant will be considered by EPA in the applicant's Stage-One proposal plan and budget. Funds may be used for start-up expenses such as salaries, renting space, and supplies. The funds may also be used for start-up capital expenditures such as office furniture or equipment. However, purchase or rehabilitation of real property is not an eligible activity. Capital acquisitions occurring under this grant shall become and remain the property of the grantee, subject to the limitations of 40 CFR part 31.

b. At least 90 percent of the grant sum shall be for the use of the State agency established or designated to implement the State certification program. The remainder may be used by any other part of the administrative costs of the grant (see Unit X. of this document for a full definition of administrative costs) applicable to this grant program.

c. EPA reserves the right, in negotiating the grant agreement, to delete budget items that, in its judgement, are not necessary for the direct support of program purposes, and to request the grantee to redirect the deleted sums to other acceptable purposes or make a corresponding reduction in the grant request.

3. *Limitations on use of assistance.* The Grant shall be used solely for the purpose described in the applicant's approved implementation plan and the budget, including any changes that may be negotiated and adopted in the grant agreement.

4. *Threshold requirements-applicant's matching contribution.* At a minimum, the applicant shall provide a matching contribution of at least 10 percent of the requested grant sum. That contribution may be in cash or in-kind. In-kind contributions shall be given a monetary value.

II. Purpose and Authority

Section 1021 of Title X of the Housing and Community Development Act of 1992 amended TSCA to add Title IV. TSCA Title IV, at section 404(g), provides authority for EPA to award these grants. However, because the funds for these grants were originally appropriated to HUD for award pursuant to HUD's section 1011(g) grant authority, EPA will impose the statutory restrictions relating to 1011(g) grants, such as the 10 percent match requirement of section 1011(h); the 10 percent limit on administrative expenses imposed by section 1011(j); and the section 1011(n) prohibition on award more than 2 years after the promulgation of section 402 regulations unless the State has an authorized program.

These grants are intended to assist applicant State governments seeking EPA authorization under Title IV of TSCA to develop and carry out State Training, Accreditation and Certification Programs, once States have enacted enabling legislation. To achieve authorization under Title IV, programs must: (1) Be as protective of human health and the environment as the federal program established under TSCA Title IV sections 402 (as promulgated in final on August 29, 1996) or 406, or both, and (2) provide adequate enforcement.

Just as many building inspection departments are wholly or partially self-supporting from permits and license fees, it is expected that State lead-based paint certification programs, under TSCA section 402 - 404 rules, can become at least partially self-supporting. During the startup of such efforts, however, there may be a period before potential revenues achieve expected levels. These grants are intended to help States bridge that gap, by providing the initial seed money for the implementation and staffing of a certification program.

III. Background

1. *Policy.* The purpose of this program is to implement a national strategy, as defined in the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as widely and expeditiously as possible. Lead-based paint hazard-reduction activities present potentially substantial hazards to workers and supervisors, occupants and neighboring residents (particularly children under the age of 6 and pregnant women), and inspectors and others who must visit the site during the course of work. If improperly carried out, the work may result in substantially greater exposure to hazards than previously existed; therefore, this work should be performed only by thoroughly trained and licensed or certified workers, supervisors, contractors, inspectors and risk assessors. To meet this need, EPA promulgated the final TSCA Title IV, section 402 rule on August 29, 1996 to establish Model State Programs that set minimum standards for a qualified and properly trained workforce to assist in the prevention, detection and elimination of hazards associated with lead-based paint. This rule helps ensure that individuals and firms conducting lead-based paint activities in target housing and child-occupied facilities will do so in a way that safeguards the environment and protects the health of building occupants, especially children under the age of 6.

Traditionally, States and local governments have provided oversight and protection for the public against the general hazards of construction and chemical hazards. It is thus the Federal government's policy to draw upon this State source of knowledge and expertise in providing the needed oversight and protection for the public against the hazards of lead-based paint and the work of reducing those hazards.

2. *Development of EPA requirements.* To assure safe and effective performance of the work, Congress required that performance of lead-hazard testing and lead-hazard reduction activities under this Grant program shall be performed by certified contractors, supervisors, workers, inspectors and risk assessors. Sections 402 and 404 of TSCA Title IV were promulgated in final on August 29, 1996, establishing the requirements of a Model State Program that contains certification and accreditation requirements, and regulations on certification. Subpart Q of the 402 Rule provides a description of the minimum basic elements that need to be included in State legislation. Under section 1011(n) of Title X, any State that does not have an EPA-approved certification program by August 31, 1998, will not receive further funding through these grants.

For further information on this subject, including technical assistance, interested States may contact their EPA Regional Lead Coordinator. A list of current Regional Lead Contacts can be found in Unit IX. of this document.

3. *Deadline for State enabling legislation*. There are no time limitations associated with these grant funds; rather, the grant program will cease when the funds are exhausted. States, however, are reminded that they have until August 31, 1998, to receive EPA authorization or the Agency will begin to administer and enforce the regulations in any non-authorized State.

IV. Allocation Amounts

This Grant program is making available $3,548,910 for approximately 18 grants, not to exceed $200,000 each.

V. Selection Criteria and Process

1. *Generally*. For many States, the enactment of an acceptable certification program and the implementation of an acceptable agency plan will be several months to a year or more after the publication of this document. Publication of detailed regulations applicable to the State program are likely to take up to an additional 6 months. For these reasons, this grants program has been divided into two stages to ease the application burden on interested States. Stage One, described in paragraph 2 of this unit, will be the initial application for a grant, after satisfactory enabling legislation has been signed into State law. That application will include the text of the State legislation, a program implementation plan, a budget, and a request for one-half of the total grant sum shown in the budget. Stage Two, described in paragraph 3 of this unit, includes the text of promulgated regulations, detailing the functions of the Agency, and a request for the balance of the grant sum. If requested, EPA will provide technical assistance to an applicant or grantee on legislation, regulations, the implementation plan, or budget elements, before funding either Stage One or Stage Two.

2. *Stage One*. A State that was not previously awarded a HUD Category II grant may file a formal grant application at any time after an enabling statute, or amendment to the existing legislation, is signed into law, but not sooner. States that have existing enabling legislation may file a formal Stage One Grant application at any time. Upon acceptance by EPA of the statutory language, the implementation plan, and the budget, the State will receive one-half its total grant sum requested in its application. States that passed enabling legislation prior to promulgation of the TSCA Title IV section 402 final rule (August 29, 1996) will be eligible to apply for Stage One grant funding, even though their enabling legislation may not be consistent with the TSCA Title IV section 402 requirements. These States, however, do need to meet the program elements discussed in Appendix E of HUD's Notification of Funding Availability document published in the June 4, 1993 **Federal Register**. EPA does not want to withhold partial funding from States that enacted their enabling legislation more rapidly than EPA could promulgate its rule. However, States in this situation will be ineligible for Stage Two funding under this grant program until they pass additional legislation consistent with TSCA section 402 requirements. The application shall include:

a. The text of the statute.

b. An implementation plan that establishes or designates an agency, or agencies, to carry out the training and certification functions, and to promulgate or revise the detailed regulations, if necessary, including:

(i) A proposed schedule for regulation development, if applicable.

(ii) The plan to address potential conflicts in overall State program design if enabling statutes are significantly prescriptive.

(iii) Delineation of agency responsibilities.

(iv) Key contacts.

c. A proposed budget.

3. *Stage Two*. States that have filed an acceptable application under Stage One may file either the enabling regulations or the amended regulations, and request the final half of the grant sum at any time.

VI. EPA Review of the Applications

EPA will provide a prompt response to the State applicant at each stage of the application cycle. If the grant is disapproved, EPA will provide comments on why the application is not acceptable. The State may then resubmit a new application for reconsideration with a new corresponding receipt date.

Upon completion of the review and acceptance of a Stage One application, EPA will schedule an appointment for negotiating and signing of the Grant Agreement. Upon completion of the review and acceptance of a Stage Two request for funds, EPA will make the balance of the grant sum available to the grantee.

Approval of a State's Stage One or Stage Two application under this program does not equate to Federal approval of the State's Certification Program: approval of this grant only constitutes approval for funding. TSCA section 404 lists the procedure for the approval of State programs.

VII. Application Requirements

1. *Contents*. To be considered for funding, a Stage One application shall, at a minimum, include the following forms and certifications which are contained in EPA's ''Application Kit for Assistance'':

- Standard Form 424 (Application for Federal Assistance).
- EPA Form 5700-48 (Procurement Certification).
- Drug-Free Workplace Certification.
- Debarment and Suspension Certification.
- Disclosure of Lobbying Activities.
- A return mailing address.
- A copy of the enacted or amended State legislation.
- A detailed implementation plan including staffing for carrying out the implementation described in this document.
- A detailed line-item budget with sufficient information to clearly justify costs. The budget shall be by task and subtask.
- The application shall be in compliance with Federal civil rights laws and requirements.
- The application shall include assurances of nondiscrimination on the basis of age or handicap, in compliance with the Age discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and all regulations issued pursuant to these authorities.

2. *Environmental review*. The activities to be supported under this grant program do not involve physical intervention at any real properties, and therefore do not require an environmental review. However, the use of these grants to assist in the purchase of equipment for use in a building in special flood hazard area can only be undertaken where the community participates in the National Flood Insurance Program and flood insurance is purchased in accordance with the applicable regulations (44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding these hazards; and flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term, unless the property is covered by a FEMA-approved State policy of self-insurance.

VIII. Reports

Grantees shall submit quarterly progress reports to their EPA Regional Office's Lead Contact that reflect the grantee's expenditures and technical progress to date, compared with the original plan, and a narrative describing important events and problems encountered during the period.

IX. Application Procedures and Schedule

Applications must be submitted to the appropriate EPA regional office in duplicate; one copy to the regional lead program branch and the other to the regional grants management branch. Early consultations are recommended between prospective applicants and their EPA regional offices. Because TSCA section 404(g) grants will be administered at the regional level, these consultations can be critical to the ultimate success of a State's project or program. Work programs are to be negotiated between applicants and their EPA regional offices to ensure that both EPA and State priorities can be addressed. Any application from a State, Territory, or the District of Columbia without an authorized program must demonstrate how the proposed activities will lead to that State's pursuit of authorization. Also, any applicant proposing the collection of environmentally related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control.

For more information about this financial assistance program, or for technical assistance in preparing an application for funding, interested parties should contact the Regional Primary Lead Contact person in the appropriate EPA regional office. The mailing addresses and contact telephone numbers for these offices are listed below.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), JFK Federal Building, One Congress St., Boston, MA 02203. Telephone: (617) 565–3836 (Jim Bryson)

Region II: (New York, New Jersey, Puerto Rico, Virgin Islands), Building 5, SDPTSB, 2890 Woodbridge Ave., Edison, NJ 08837–3679. Telephone: (908) 321–6671 (Lou Bevilacqua)

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), 841 Chestnut Bldg., Philadelphia, PA 19107. Telephone: (215) 566–2084 (Gerallyn Valls)

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 100 Alabama St., SW, Atlanta, GA 30303. Telephone: (404) 562–8998 (Rose Anne Rudd)

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), SP-14J, 77 W. Jackson St., Chicago, IL 60604. Telephone: (312) 886–7836 (David Turpin)

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 12th Floor, Suite 2000, 1445 Ross Ave., Dallas, TX 75202. Telephone: (214) 665–7577 (Jeff Robinson)

Region VII: (Iowa, Kansas, Missouri, Nebraska), ARTD/RENV, 726 Minnesota Ave., Kansas City, KS 66101. Telephone: (913) 551–7518 (Mazzie Talley)

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th St., Suite 500, Denver, CO 80202. Telephone: (303) 312–6021 (David Combs)

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), 75 Hawthorne St., San Francisco, CA 94105. Telephone: (415) 744–1094 (Harold Rush)

Region X: (Alaska, Idaho, Oregon, Washington), Solid Waste and Toxics Unit (WCM-128), 1200 Sixth Ave., Seattle, WA 98101. Telephone: (206) 553–1985 (Barbara Ross)

X. Explanation of Administrative Costs

A. Purpose

The intent of this EPA Grant program is to allow the grantee to be reimbursed for the reasonable direct and indirect costs, subject to a top limit, for overall management of developing a State accreditation and certification program for professionals engaged in lead-based paint activities. Congress set a top limit of 10 percent of the total grant sum for the grantee to perform the function of overall management of the grant program. The cost of that function, for the purpose of this grant, is defined as the ''administrative cost'' of the grant, and is limited to 10 percent of the total grant amount. The balance of 90 percent or more of the total grant sum is reserved for the development of the program.

B. Administrative Costs: What They Are Not

For the purposes of this EPA grant program for the State government, the term ''administrative costs'' should not be confused with the terms of ''general and administrative cost,'' ''indirect cost,'' and ''overhead.'' These are accounting terms usually represented by a government-accepted standard percentage rate. The percentage rate allocates a fair share of an organization's costs that cannot be attributed to a particular project or department (such as the chief executive's salary or the costs of the organization's headquarters building) to all projects and operating departments (such as the Fire Department, the Police Department, the Community Development Department, the Health Department or this program). Such allocated costs are added to those projects' or departments' direct costs to determine their total costs to the organization.

C. Administrative Costs: What They Are

For the purposes of this EPA grant program, ''Administrative Costs'' are the grantee's allowable direct costs for the overall management of the grant program plus the allocated indirect costs. The allowable limit of such costs that can be reimbursed under this program is 10 percent of the total grant sum. Should the grantee's actual costs for overall management of the grant program exceed 10 percent of the total grant sum, those excess costs shall be paid for by the grantee. However, excess costs paid for by the grantee may be shown as part of the requirement for cost-sharing funds to support the grant.

D. Administrative Costs: Definition

1. *General.* Administrative costs are the allowable, reasonable, and allocable direct and indirect costs related to the overall management of the EPA grant. Those costs shall be segregated in a separate cost center within the grantee's accounting system, and are eligible for reimbursement as part of the grant, subject to the 10 percent limit. Administrative costs do not include any of the staff and overhead costs directly arising from developing and implementing an authorized State accreditation and certification program for professionals engaged in lead-based paint activities.

2. *Specific.* Reasonable costs for the grantee's overall grant management, coordination, monitoring and evaluation are eligible administrative costs. Subject to the 10 percent limit, such costs include, but are not limited to necessary expenditures for the following goods, activities, and services:

a. Salaries, wages, and related costs of the grantee's staff, the staff of affiliated public agencies, or other staff engaged in the grantee's overall grant management activities: In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocated to the program for each person whose primary

responsibility (more than 65 percent of their time) with regard to the grant program involved direct overall grant management assignments, or the pro rate share of the salary, wages, and related costs of each person whose job includes any overall grant management assignments. The grantee may have one of these two methods during the program. Overall grant management includes the following kinds of activities:

(i) Preparing grantee program budgets and schedules, and amendments thereto.

(ii) Preparing presentations, reports, and other documents related to the program to EPA.

(iii) Developing systems for assuring compliance with program requirements.

(iv) Evaluating program results against stated objectives.

(v) Managing or supervising persons whose responsibilities with regard to the program include such assignments as those described in paragraphs (i) through (iv) of this unit.

b. Travel costs incurred for official business in carrying out the overall grant management.

c. Administrative services performed under third party contract or agreement, for services directly allocable to overall grant management such as overall-grant legal services, overall-grant accounting services, and overall-grant audit services;

d. Other costs for goods and services required for and directly related to the overall management of the grant program, including such goods and services as telephone, postage, rental of equipment, renter's insurance for the program management space, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

To repeat, all of the above activities, goods and services (Items a. (i.-v.), b., c., and d. in Unit X.D.2. of this document) are subject to the 10 percent limit.

List of Subjects

Environmental protection, Grants, Lead, Training and accreditation.

Dated: October 28, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxic Substances.

[FR Doc. 97–29206 Filed 11–4–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5917–3]

EPA's Unregulated Contaminant Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of a stakeholder meeting on the development of Unregulated Contaminant Monitoring Regulations and a List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a two-day public meeting on EPA's development of Unregulated Contaminant Monitoring Regulations and a List. The focus of this meeting will be the development of the Unregulated Contaminant Monitoring Regulation and List of unregulated contaminants to be monitored by public water systems as required by the Safe Drinking Water Act (SDWA) as amended in 1996. The meeting will be open to any interested parties. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the Unregulated Contaminant Monitoring Program will be held on December 2–3, 1997, from 9:00 a.m. to 4:00 p.m. EST.

ADDRESSES: Resolve, Inc. (an EPA contractor) will provide logistical support for the stakeholders meeting. The meeting will be held at Resolve, Inc., 1255 23rd Street, N.W., Suite 275, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Mr. Jeff Citrin at Resolve, Inc., 1255 23rd Street, N.W., Suite 275, Washington, D.C. 20037; phone: (202) 965–6388; fax: (202)338–1264, or e-mail at jcitrin@resolv.org.

For other information on Unregulated Contaminant Monitoring Regulations and a List, please contact Charles Job, at the U.S. Environmental Protection Agency, Phone: 202–260–7084, Fax: 202–260–3762.

Members of the public wishing to attend the meeting may register by phone by contacting Mr. Jeff Citrin by November 15, 1997. Those registered for the meeting will receive background materials prior to the meeting.

SUPPLEMENTARY INFORMATION:

A. Background on the Unregulated Contaminant Monitoring Regulation

EPA must issue regulations establishing criteria for the monitoring of unregulated contaminants. Monitoring shall vary based on system size, source water, and contaminants likely to be found. Only a representative sample of systems serving 10,000 persons or fewer must be monitored. Within 3 years after enactment, and every 5 years thereafter, EPA shall issue a list of not more than 30 unregulated contaminants to be monitored by public water systems. Results of the monitoring are to be included in the national contaminant occurrence data base. Each state may develop an unregulated contaminant monitoring plan for small and medium systems (serving fewer than 10,000 persons). EPA is required to cover the reasonable costs of testing and laboratory analysis for such plans, using funds authorized by Congress for unregulated contaminant monitoring or a $2 million Drinking Water State Revolving Fund (DWSRF) reservation. EPA shall waive the requirement for monitoring of unregulated contaminants in a state if the state demonstrates that the criteria for listing are not applicable in the state. Water systems must provide the results of unregulated contaminant monitoring to the primacy agency (state/EPA) and must notify persons served by the system of the availability of results [section 1445(a)(2)].

B. Request for Stakeholder Involvement

The upcoming meeting deals specifically with EPA's efforts to develop Unregulated Contaminant Monitoring Regulations and a List. EPA believes that the initial list of unregulated contaminants for which monitoring will be required will largely come from the first Contaminant Candidate List (CCL) to be published in final form by February 1998. EPA will use the CCL to establish priorities for additional occurrence data gathering, health effects research, and regulation development. One of EPA's goals is to obtain monitoring data on certain unregulated contaminants to determine whether any of the contaminants should be regulated in the future to protect drinking water used by consumers from public water systems. These unregulated contaminant data will also be used to support the development of future CCL and to guide future research. These data will be reported to the National Contaminant Occurrence Data Base and to the users of the selected water systems, as required by law.

The EPA Office of Ground Water and Drinking Water (OGWDW) sees the involvement of interested parties, representing a variety of perspectives and expertise, as critical to the development of a credible, effective and implementable regulation and list. This stakeholder meeting will provide an important opportunity for such involvement. Some anticipated issues

for discussion include the following questions:

1. Is the objective of unregulated contaminant monitoring to identify the occurrence of contaminants in the environment or to assess exposure from the finished water?
2. What should be the criteria for an unregulated contaminant monitoring program?
3. What is a ''representative sample'' of small and medium systems?
4. What should be the protocols for representative sampling?
5. What monitoring data should be reported and how?
6. What should be the criteria for determining which of the unregulated contaminants on the CCL should be a candidate for required monitoring?
7. What analytical methods should apply to unregulated contaminants?
8. How should the results of unregulated contaminant monitoring be used?
9. What steps need to be taken and what process should be used to complete this effort?

EPA has convened this public meeting to hear the views of stakeholders on the development of Unregulated Contaminant Monitoring Regulations and a List. The public is invited to provide comments on the issues listed above or other issues related to the Unregulated Contaminant Monitoring Regulations and a List during the December 2–3, 1997 meeting.

Dated: October 29, 1997.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–29292 Filed 11–4–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2236]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 30, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchase from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 20, 1997. See § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (CC Docket No. 92–297).

Number of Petitions Filed: 1.

Subject: Dismissal of all Pending Pioneer's Request (CC Docket No. 92–297, RM–7872, PP–22 ET Docket No. 94–124, RM–8784 GEN Docket No. 90–314, PP–68 GEN Docket No. 90–357, PP–25 IB Docket No. 97–95, RM–8811 RM–7784, PP–23 RM–7912, PP–34 et. al.).

Review of the Pioneer's Preference Rules (ET Docket No. 93–266) Docket Terminated

Number of Petitions Filed: 1.

Subject: Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming Accessibility (MM Docket No. 95–176).

Number of Petitions Filed: 8.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Station (Bainbridge, Georgia) (MM Docket No. 96–253, RM–8962).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29248 Filed 11–4–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Ben Federico Freight Consolidator, Inc., 8045 N.W. 67th Street, Miami, FL 33166, Officers: Cathy M. Federico, President, Carol A. Federico, Vice President

EconoQuality Freight Forwarders, Inc., 3201 N.W. 116 Street, Suite B, Miami, FL 33167–2917, Officers; Mandell Pomeranc, President, Bryan Pomeranc, Vice President

TSJ Consolidators, Inc., 13737 Artesia Blvd., #107, Cerritos, CA 90703, Officers: Joseph Chao-Hua Chen, President, Clemencia Tizon Hilvano, Vice President

Cordaro Shipping Co., Inc., 80 River Street, Hoboken, NJ 07030, Officer: Francesco Cordaro, President

Gamma Freight Forwarders, Inc., 8500 N.W. 30th Terrace, Miami, FL 33122, Officers: Roberto A. Guedes, President, Antonio Guedes, Vice President

All-Links Freight Co., 5250 W. Century Blvd., #434, Los Angeles, CA 90045, Yung Hoon Kim, Sole Proprietor

Hansa U.S.A. Corp., 2654 N.W. 112th Avenue, Miami, FL 33172, Officer: Marcus Kadur, President, William R. Fulford, Vice President

Dated: October 31, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–29257 Filed 11–4–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 55810.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 5:00 a.m.—October 23, 1997.

CHANGE IN THE MEETING: Correction in the time and date of the meeting—Should be October 23, 1997—5:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–29358 Filed 11–3–97; 11:29 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

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. The notices also will 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 November 20, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Michael Buckner Owens, Onida, South Dakota; to acquire additional voting shares of The Adino Company, Onida, South Dakota, and thereby indirectly acquire The Onida Bank, Onida, South Dakota.

Board of Governors of the Federal Reserve System, October 31, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29286 Filed 11–4–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Commercial BancShares, Incorporated, Parkersburg, West Virginia; to merge with Gateway Bancshares, Inc., McMechen, West Virginia, and thereby indirectly acquire The Bank of McMechen, McMechen, West Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Independent Southern Bancshares, Inc. Employee Stock Ownership Trust, Brownsville, Tennessee; to acquire up to 35 percent of the voting shares of Independent Southern Bancshares, Inc., Brownsville, Tennessee, and thereby indirectly acquire Brownsville Bank, Brownsville, Tennessee, Bank of Commerce, Trenton, Tennessee, Tennessee Bank and Trust, Memphis, Tennessee, and Union Savings Bank, Covington, Tennessee.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Woodforest Bancshares, Inc., Houston, Texas, and Sun Belt Bancshares, Corporation, Wilmington, Delaware; to acquire 35 percent of the voting shares of Main Street National Bank, Cleveland, Texas.

Board of Governors of the Federal Reserve System, October 31, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29285 Filed 11–4–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, November 10, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 31, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29316 Filed 10–31–97; 4:34 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 962–3218]

Venegas Inc.; Angel Venegas; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Michael J. Bloom, Federal Trade Commission, New York Regional Office, 150 William Street, Suite 1300, New York, NY 10038. (212) 264–1207.

Donald. G. D'Amato, Federal Trade Commission, New York Regional Office, 150 William Street, Suite 1300, New York, NY 10038. (212) 264–1207.

Denise Tighe, Federal Trade Commission, New York Regional

Office, 150 William Street, Suite 1300, New York, NY 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for October 29, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Venegas Inc. (''Venegas'') and Angel Venegas.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns print advertisements for proposed respondents' Alen, a powdered nutritional supplement that contains wheat germ, wheat bran, soybean extract, and seaweed extract. The Commission's complaint alleges that the proposed respondents made unsubstantiated representations that Alen: increases life expectancy; delays the aging process; eliminates anemia; increases the immune system's defenses; increases memory or scholastic performance; helps diabetics naturally produce insulin; reduces the pain of rheumatism or migraines; lowers blood pressure; helps heal ulcers; increases muscle bulk; controls addictions to excess fat and sweets; and protects against infections and increases and enhances the healing process.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from representing that Alen or any other product: Increases life expectancy; delays the aging process; eliminates anemia; increases the immune system's defenses; increases memory or scholastic performance; helps diabetics naturally produce insulin; reduces the pain of rheumatism or migraines; lowers blood pressure; helps heal ulcers, increases muscle bulk; controls addictions to excess fat and sweets; or protects against infections and increases and enhances the healing process, unless at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from making any representation about the benefits, performance, or efficacy of Alen, or any food, dietary supplement, or drug, unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed order provides that nothing in this order shall prohibit proposed respondents from making any representation for any product permitted by the Food and Drug Administration. Paragraph IV of the proposed order provides that nothing in this order shall prohibit proposed respondent from making any representation for any drug permitted by the Food and Drug Administration.

Paragraph V of the proposed order requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation, and all materials that were relied upon in disseminating the representations, covered by the proposed order. Additionally, Paragraph VI requires distribution of a copy of the consent order to current and future officers and agents. Further, Paragraph VII provides for Commission notification upon a change in the corporate respondent, and Paragraph VIII requires Commission notification when the individual respondent changes his present business or employment. Paragraph IX requires proposed respondents to file compliance reports with the Commission. Lastly, Paragraph X provides for the termination of the order after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–29279 Filed 11–4–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Cancellation of November Meeting.

Cancellation

The previously announced meeting (**Federal Register** of October 30) on Friday, November 7, 1997, is hereby cancelled. Due notice will be given for the next meeting, to be held on December 19.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (Current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: October 31, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–29299 Filed 11–4–97; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Commission on Consumer Protection and Quality in the Health Care Industry's Ad Hoc Work Group on Respect and Nondiscrimination; Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care

Industry's Ad Hoc Work Group on Respect and Nondiscrimination. This meeting will be open to the public, limited only by the space available.

Place of meeting: Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, S.W. Washington, D.C. 20201.

Time and Dates: 10:00 a.m.–2:00 p.m., Monday, November 3, 1997.

Purpose/Agenda: To discuss issues related to a draft Consumer Bill of Rights and Responsibilities. Agenda items are subject to change as priorities dictate.

Contact Person: For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert H. Humphrey Building, Room 118F, 200 Independence Avenue, S.W., Washington, DC 20201; [202/205–3038].

Dated: October 29, 1997.

Janet Corrigan,

Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

[FR Doc. 97–29205 Filed 10–31–97; 10:05 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Evaluation of the National Health Service Corps —New— The National Health Service Corps (NHSC) was established in 1971 to help correct the maldistribution of health care personnel and to improve the delivery of services in areas with shortages of health care professionals. Through the Scholarship and Loan Repayment Programs the NHSC recruits health clinicians and places them in areas designated as health professional shortage areas.

The evaluation of this program will include three mail surveys, two directed at scholarship and loan repayment program clinicians (physicians, dentists, physician assistants, nurse practitioners and nurse midwives), and one directed at site administrators currently employing NHSC clinicians. The Survey of NHSC Alumni (clinicians who began service on January 1, 1980 and terminated their service before March 14, 1997) will assess alumni attitudes about the NHSC experience including recruitment, placement, and service contributions to the site and community (for example, expanding clinical services, serving in clinical leadership positions, participating in quality improvement activities and initiating community primary care initiatives). In addition, the survey will examine various measures of clinician retention in underserved areas. The Survey of NHSC Clinicians (current) will also assess attitudes about the NHSC experience including recruitment, placement and service contribution to the site and community. The Survey of Administrators in Sites with NHSC Clinicians will assess sites' experiences with NHSC clinicians and will provide an assessment of their service contributions to the site and community. The data collected through the surveys will be used to formulate programmatic and policy recommendations designed to strengthen the NHSC program and increase its effectiveness.

The estimated burden is as follows:

Type of respondent	Number of respondents	Response per respondent	Hours per response	Total burden hours
Eligible Alumni Clinicians	1,555	1	.50	778
Ineligible Alumni Clinicians	173	1	.07	12
Eligible Current Clinicians	965	1	.50	483
Ineligible Current Clinicians	51	1	.07	4
Eligible Site Administrators	251	1	.50	126
Ineligible Site Administrators	13	1	.07	1
Total	3,008			1404

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 30, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–29259 Filed 11–4–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Gila River Indian Community Demographic Information

SUMMARY: Under the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Diabetes and Digestive and Kidney Diseases, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 11, 1997, on page number 37269 and allowed 60 days for public comment. No public comments were received during the comment period. The purposes of this notice is to allow an additional 30 days for public comment. the National Institutes of Health 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.

Proposed Collection

Title: Gila River Indian Community Demographic Information.

Type of Information Collection Request: NEW.

Need and Use of Information Collection: This study will identify current residents of the Gila River Indian Community of Arizona, including place of residence, name and date of birth of each individual, familial relationships, degree of Indian blood and tribal heritage. The findings will facilitate current research into the causes of diabetes mellitus in Indians of the southwestern United States, particularly with respect to the genetic determinants of the disease.

Frequency of Response: One-time collection.

Affected Public: Individuals or households.

Type of Respondents: Individuals, Parents, or Guardians. The annual reporting burden is as follows:

Estimated Number of Respondents: 11,500;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: .25; and

Estimated Total Annual Burden Hours Requested: 958. The annualized cost to respondents is estimated at: $9,538. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Individuals and Families	11,500	1	0.25	958

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Richard M. Bryan, Administrative Officer, Phoenix Epidemiology & Clinical Research Branch, DIR, NIDDK, NIH, Building 1, 4212 North Sixteenth Street, Phoenix, AZ 85014, or call non-toll-free number (602) 200–5221 or E-mail your request, including your address to: mbryan@phx.niddk.nih.gov

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 21, 1997.

Clifford Moss, Jr.,

Executive Officer, NIDDK.

[FR Doc. 97–29228 Filed 11–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix), notice is hereby given of the following meetings:

Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.

Name of Committee: National Human Genome Research institute Initial Review Group, Genome Research Review Subcommittee.

Date: November 5, 1997.

Time: 8:30 am.

Place: Georgetown Suites Hotel—Harbor Building.

Contact Person: Kenji Nakamura, Ph.d., Office of Scientific Review, National Human Genome Research Institute, National Institutes of health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance program No. 93,172, Human Genome Research)

Dated: October 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29229 Filed 11–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–53]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: January 5, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT:

Carissa Janis, telephone number (202) 708–3291 x2487; (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: ''Service Coordinator Database Information''.

This is a one-page form.

OMB Control Number: 2502–xxxx.

Description of the need for the information and proposed use:

The proposed form will be used to gather information about HUD subsidized housing projects that employ a Service Coordinator. The information will be placed in a national Service Coordinator database and will supplement existing data.

The completion of this form is completely voluntary. Receipt of benefits will in no way be dependent on the completion of this form.

The database is for primary use by the public. It will enable Service Coordinators to find, network with, and obtain information from their colleagues across the country. This ability will help to enhance their job, thereby providing a better service to residents.

HUD will also use the database for reference and information for funding purposes.

HUD currently does not have a comprehensive list or database of all such projects. This form will assist HUD in furthering this goal.

Agency forms, if applicable: Subject of this notice: ''Service Coordinator Database Information''.

Members of affected public: Owners, managers, or Service Coordinators of HUD assisted housing projects; Public Housing Authority or State housing finance agency staff or Service Coordinators serving their residents, and HUD staff.

Status of the proposed information collection: The information collection form is being submitted to obtain OMB approval for use by the public.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 30, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–29264 Filed 11–4–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–52]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment due date:* December 5, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Insurance of Adjustable Rate Mortgages.

Office: Housing.

OMB Approval Number: 2502–0322.

Description of the Need For the Information and Its Proposed Use: This information is part of a disclosure statement lenders must furnish to borrowers stating that the interest rate on the mortgage may change, identifying the index used and the frequency of adjustments, and providing a hypothetical payment schedule showing increases over the first five years.

Form Number: None.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion and third party disclosure.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Disclosure Statement	20,000		1		.07		1,400

Total Estimated Burden Hours: 1,400.

Status: Reinstatement, without changes.

Contact: Diane Lobasso, HUD, (202) 708–2700 x2191; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 29, 1997.

[FR Doc. 97–29266 Filed 11–4–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–834413

Applicant: Audobon Park & Zoological Garden, New Orleans, LA.

The applicant requests a permit to import one male and one female jaguar (*Panthera onca*) born in captivity at the Guadalajara Zoo, Mexico for the purpose of enhancement of the species through conservation education.

PRT–835695

Applicant: San Diego Wild Animal Park, San Diego, CA.

The applicant requests a permit to export one male and 2 female captive-bred ocelots *(Leopardus pardalis)* to the Tsuzuki Nature Park, Japan for the purpose of enhancement to the survival of the species through captive breeding.

PRT–834794

Applicant: George Brimhall, Paradise Valley, AZ.

The applicant requests a permit to import a sport-hunted cheetah *(Acinonyx jubatus)* taken in Zimbabwe for the purpose of enhancement of the survival of the species.

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 700, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–835187

Applicant: Point Defiance Zoo, Tacoma, WA.

Permit Type: Public Display.

Name and Number of Animals: Walrus *(Odobenus rosmarus)*, 1.

Summary of Activity to be Authorized: The applicant has requested a permit for public display of a walrus calf found orphaned near Barrow, AK.

Source of Marine Mammals: Orphaned animal recovered by the U.S. Fish and Wildlife Service near Barrow, AK and placed with the Pt. Defiance Zoo for immediate care.

Period of Activity: Up to five years from issuance date of the permit, if issued.

RT–833153

Applicant: The WyoBraska Natural History Museum, Gering, NE.

Permit Type: Public Display.

Name and Number of Animals: Walrus *(Odobenus rosmarus)*, 1.

Summary of Activity to be Authorized: The applicant has requested a permit to import a sport-hunted trophy of a male walrus taken in the Northwest Territories, Canada and donated to the facility for the purpose of public display at the WyoBraska Natural History Museum.

Source of Marine Mammals: Sport hunted in Canada.

Period of Activity: Up to five years from issuance date of the permit, if issued.

PRT–835771

Applicant: Gary Joal Ganz, Beverly Shores, IN.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–835730

Applicant: Peter M. Leach, Kansasville, WI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–835807

Applicant: Madleine Kay, Juniper Hills, CA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population, Northwest Territories, Canada for personal use.

PRT–835809

Applicant: Clifford Senter, Plaistow, NH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–836101

Applicant: Everal G. Gilbertson, Rochester, MN.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–836090

Applicant: Robert Moses, Worthington, IN.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application 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 above address within 30 days of the date of publication of this notice.

Dated: October 30, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–29200 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Comment Period on Draft Supplemental Information Regarding the Recovery Plan for the Grizzly Bear (Ursus Arctos horribilis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: extension of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is being extended for commenting on draft supplemental information to the recovery plan for the grizzly bear (*Ursus arctos horribilis*). All interested parties that have not done so are invited to submit comments on this information.

DATES: Comments on the draft supplemental information must be received on or before December 1, 1997, to ensure they receive consideration by the Service.

ADDRESSES: Written comments and materials regarding this information should be sent to the Grizzly Bear Recovery Coordinator. U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, MT 59812.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*), the Service approved the revised Grizzly Bear Recovery Plan on September 10, 1993. In May 1994 The Fund For Animals, Inc., and 22 other organizations and individuals filed suit in the U.S. District Court for the District of Columbia over the adequacy of the Plan approved in 1993. Later in May 1994 the National Audubon Society and 19 other organizations and individuals also filed suit in the same court. The two cases were eventually consolidated. In September 1995 the court issued an opinion. The motions for summary judgment of both the plaintiffs and the defendants were granted in part and denied in part. The court ordered the Service to reconsider certain portions of the Plan, and to provide supplemental information. The information presented in the document being made available for review includes supplemental information that the Service was to provide and the results of its reconsideration.

Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

Public Comments Solicited

The Service solicits written comments on the supplemental information described above. All comments received by December 1, 1997, will be considered prior to finalization of the information. Appropriate portions of the information will be appended to, and become part of, the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 29, 1997.

Terry T. Terrell,

Deputy Regional Director, Denver, CO.

[FR Doc. 97–29240 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 167, Page 45674, that an application had been filed with the Fish and Wildlife Service by Bobbie F. McLawhorn, New Bern, NC, for a permit (PRT 833590) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel population, Canada, for personal use.

Notice is hereby given that on October 9, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.)* the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 167, Page 45674, that an application had been filed with the Fish and Wildlife Service by John C. Bryam, Jr., Mission, KS, for a permit (PRT–833352) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the McClintock Channel population, Canada, for personal use.

Notice is hereby given that on October 9, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 167, Page 45674, that an application had been filed with the Fish and Wildlife Service by Arlo Speiss, El macero, CA for a permit (PRT–833156) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken prior to April 30, 1994 from the Lancaster Sound population, Canada, for personal use.

Notice is hereby given that on October 10, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 24, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 79, Page 20019, that an application had been filed with the Fish and Wildlife Service by the Alaska Science Center for amendment of a permit (PRT–766818) to lethally take up to 10 Alaskan sea otters (Enhydra lutris lutris) for the purpose of scientific research. On June 26, 1997, a second notice was published in the **Federal Register**, Vol. 62, No. 123, Page 34482, to announce the availability of additional information in reference to the amendment request.

Notice is hereby given that on October 16, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service denied the requested permit amendment.

On August 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 167, Page 45674, that an application had been filed with the Fish and Wildlife Service by Robert Johnson, Millwood, NY, for a permit (PRT–833623) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on October 15, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: October 30, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–29201 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Tribal-State Gaming Compact Taking Effect

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through her delegated authority, is publishing the Tribal-State Compacts between the Pueblo of Picuris, the Pueblo of Santa Ana, the Jicarilla Apache Tribe and the State of New Mexico executed on August 20, 1997, and the Pueblo of Nambe and the State of New Mexico executed on September 5, 1997. By the terms of IGRA these Compacts are considered approved, but only to the extent the Compacts are consistent with the provision of IGRA.

SUPPLEMENTARY INFORMATION: The Department believes that the decision to let the 45-day statutory deadline for approval or disapproval of the Compacts expire without taking action is the most appropriate course of action given the unique history of state and federal court cases and legislative actions that have shaped the course of Indian gaming in New Mexico. A letter further explaining the Department's decision is available from the Bureau of Indian Affairs, Indian Gaming Management Staff at the address below.

DATES: This action is effective November 5, 1997.

FUR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, 1849 C Street NW, MS 2070–MIB, Washington, D.C. 20240, (202) 219–4068.

Dated: October 23, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

James H. McDivitt,

Certifying Officer.

[FR Doc. 97–29300 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

TITLE: Gas Processing and Transportation Allowances.

COMMENTS: This collection of information has been submitted to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e-Mail address is David__Guzy@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__Jones@mms.gov.

DATES: Written comments should be received on or before December 5, 1997.

SUMMARY: The Secretary of the Interior is responsible for the collection of royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute royalty funds in accordance with those laws. The product valuation and allowance determination process is essential to assure that the Indians receive payment on the proper value of the minerals being removed. In order to determine whether the amount of royalty tendered represents the proper royalty due, it is first necessary to establish the proper value of the gas and gas plant products being sold, or otherwise disposed of, as well as the proper costs associated with the allowable deductions from the value of gas and gas plant products.

Under certain circumstances lessees are authorized to deduct from royalty payments, the reasonable actual costs of transporting the royalty portion of produced minerals from the lease to a processing or sales point not in the immediate lease area. Transportation allowances are a part of the product valuation process which the Minerals Management Service (MMS) uses to determine if the lessee is reporting and paying the proper royalty amount.

When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. MMS normally will accept the cost as stated in the lessee's arm's-length processing contract as being representative of the cost of the processing allowance. In those instances where gas is being processed through a lessee owned plant, the processing costs shall be based upon the actual plant operating and maintenance expenses, depreciation, and a reasonable return on investment. The allowance is expressed as a cost per unit of individual plant products. Processing allowances may be taken as a deduction from royalty payments.

Failure to collect the data described could result in the undervaluation of leased minerals. Regulations at 30 CFR 206 establish uniform product valuation and allowance policies for all Indian leases. These regulations require information in support of the product valuation or allowances being claimed. Without such information, MMS cannot evaluate the correctness of values or allowances reported and claimed.

Description of Respondents: Lessees of Indian leases.

Frequency of Response: Annually.

Estimated Reporting and Recordkeeping Burden: 15 minutes.

Annual Responses: 3,000 responses.

Annual Burden Hours: 750 hours.

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 21, 1997.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 97–29271 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of Environmental Documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice. The acronym ''NORM'' means Naturally Occurring Radioactive Materials.

Activity/Operator	Location	Date
Chevron U.S.A., NORM Disposal Operations, NORM No. 160 ...	West Delta Area, Block 24, Lease OCS 0691, 4 miles south of Plaquemines Parish, Louisiana.	05/26/97
Dauphin Island Gathering Partners, Pipeline Activity, SEA No. G–17720.	Main Pass Area, Blocks 225, 217, 194, and 192; Viosca Knoll Area, Blocks 428, 384, 340, 296, 252, 253, 208, 209, 165, 121, 77, 33, and 32; Mobile Area, Blocks 1000, 999, 955, 954, 910, 866, 822, and 821; Lease G–17720; 6.5 miles off-shore of Dauphin Island, Alabama.	07/10/97
Shell Oil Company, Pipeline Activity, SEA No. G–17730	Main Pass Area, Blocks 146, 147, 73, 72, 71, and 70; Main Pass Area South and East Addition, Blocks 289, 290, 291, 307, 306, 308, 309, 310, 303, 302, 301, and 300; Viosca Knoll Area, Blocks 815 and 814; Lease G–17730; 34 miles east of the Louisiana coastline.	08/21/97
Dauphin Island Gathering Partners, Pipeline Activity, SEA No. G–18822.	Main Pass Area, South and East Addition, Blocks 223, 224, and 225, Lease OCS–G 18822, 54 miles from the Louisiana coastline.	09/19/97
ATP Oil and Gas Corporation, Development Activity, SEA No. N–5676A.	Garden Banks Area, Block 134, Lease OCS–G 13366, 135 miles southeast of Galveston Island, Texas.	08/25/97
Amerada Hess Corporation, Exploration Activity, SEA No. N–5708A.	High Island Area, East Addition, South Extension, Blocks 135, 136, and 180, Leases OCS–G 14203, 14217, 14218, and 14222, 130 miles south of Cameron Parish, Louisiana.	07/16/97
ORYX Energy Company, Development Activity, SEA No. S–4333UA.	High Island Area, East Addition, South Extension, Lease OCS–G 13808, 115 miles from the Texas coastline.	06/12/97
Chevron U.S.A., Development Activity, SEA No. S–4354U	Mobile Area, Block 864, Lease OCS–G 5064, 6.5 miles off-shore of Dauphin Island, Alabama.	07/11/97
Oryx Energy Company, Exploration Activity, SEA No. S–4406A	High Island Area, East Addition, South Extension, Block A–397, Lease OCS–G 13809, 116 miles southeast of the nearest coastline on Galveston Island, Texas.	08/15/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97–035A.	South Timbalier Area, Block 35, Lease OCS–G 3336, 10 miles from the Louisiana coastline.	05/19/97
Amoco Exploration and Production, Structure Removal Operations, SEA Nos. ES/SR 97–064A and 97–071.	West Delta Area, Block 140, Lease OCS–G 5682, 27 miles southeast of Plaquemines Parish, Louisiana.	04/18/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97–096.	South Timbalier Area, Block 35, Lease OCS–G 3336, 10 miles from the Louisiana coastline.	07/08/97
Amerada Hess Corporation, Structure Removal Operations, SEA No. ES/SR 97–099.	Main Pass Area, Block 273, Lease OCS–G 4918, 32 miles from the Louisiana coastline.	07/08/97
Enron Oil & Gas Company, Structure Removal Operations, SEA No. ES/SR 97–103.	Mustang Island Area, Block 783, Lease OCS–G 14104, 26 miles from the Texas coastline.	07/10/97
Enron Oil & Gas Company, Structure Removal Operations, SEA No. ES/SR 97–106.	Mobile Area, Block 914, Lease OCS–G 7846, 10 miles from the Alabama coastline.	07/11/97
CNG Producing Company, Structure Removal Operations, SEA No. ES/SR 97–113.	South Marsh Island Area, Block 81, Lease OCS–G 6692, 68 miles from the Louisiana coastline.	07/18/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97–114.	West Cameron Area, Block 48, Lease OCS–G 1351, 4 miles south of Cameron Parish, Louisiana.	07/24/97
UNOCAL Corporation, Structure Removal Operations, SEA Nos. ES/SR 97–137 through 97–140.	Eugene Island Area, Block 44, Lease OCS–G 3990, 13 miles southwest of St. Mary Parish, Louisiana.	08/11/97
UNOCAL Corporation, Structure Removal Operations, SEA No. ES/SR 97–141 & 97–142.	Vermilion Area, Block 26, Lease OCS 0297, 6 miles from the Louisiana coastline.	08/26/97
Mobil Exploration and Producing U.S. Inc., Structure Removal Operations, SEA Nos. ES/SR 97–144 & 97–145.	Main Pass Area, Block 91, Lease OCS–G 1499, 3 miles east of St. Bernard Parish, Louisiana.	09/10/97
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–146.	Vermilion Area, Block 275, Lease OCS–G 10678, 73 miles from the Louisiana coastline.	08/11/97
Forest Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 97–147 through 97–149.	West Cameron Area, Block 44, Lease OCS–G 6566, 7 miles from the Louisiana coastline.	08/15/97

Activity/Operator	Location	Date
Kerr McGee Corporation, Structure Removal Operations, SEA Nos. ES/SR 97–150 through 97–154.	Ship Shoal Area, Blocks 14, 28, 29, 30 and 32; Leases OCS–G 1359, OCS 0346, 0345, 0335, and 033; 3–8 miles south of Terrebonne Parish, Louisiana.	08/07/97
Texaco Inc., Structure Removal Operations, SEA Nos. 97–157 through 97–166 and 97–171.	South Marsh Island Area, Blocks 207, 211, 217, 221, and 218, Lease OCS 0310, 4 to 12 miles from the Louisiana coastline.	09/03/97
Stone Energy, Structure Removal Operations, SEA No. ES/SR 97–167.	Vermilion Area, Block 46, Lease OCS 0079, 10 miles south of Vermilion Parish, Louisiana.	08/26/97
Pogo Producing Company, Structure Removal Operations, SEA No. ES/SR 97–168.	Eugene Island Area, Block 295, Lease OCS–G 2104, 64 miles from the Louisiana coastline.	09/09/97
Forest Oil Company, Structure Removal Operations, SEA No. ES/SR 97–169.	High Island Area, Block A–274, Lease OCS–G 15806, 94 miles south of Cameron Parish, Louisiana.	08/07/97
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 97–172.	Main Pass Area, Block 38, Lease OCS–G 1623, 16 miles northeast of Plaquemines Parish, Louisiana.	08/28/97
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 97–173 through 97–175.	South Timbalier Area, Blocks 22 and 27, Leases OCS 0165 and OCS–G 1443, 3–6 miles south of Lafourche Parish, Louisiana.	08/22/97
Cockrell Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–176.	Eugene Island Area, Block 33, Lease OCS–G 3560, 3 miles south of St. Mary Parish, Louisiana.	08/21/97
Enserch Exploration, Inc., Structure Removal Operations, SEA No. ES/SR 97–178.	Brazos Area, Lease OCS–G 10214, 10 miles south of Matagorda County, Texas.	08/29/97
Santa Fe Resources, Inc., Structure Removal Operations, SEA Nos. ES/SR 97–186 and 97–187.	Vermilion Area, Blocks 107 and 117, Leases OCS–G 5411 and 5415, 30 miles south of Vermilion Parish, Louisiana.	09/11/97

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: October 29, 1997.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 97–29230 Filed 11–4–97; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–402]

Certain Integrated Circuits and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 30, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Fujitsu Limited, 6–1, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100, Japan, and Fujitsu Microelectronics, Inc., 3545 North First Street, San Jose, California 95134. A supplement to the complaint was filed on October 15, 1997. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits and products containing same by reason of infringement of claims 1, 2, 3, 8, 9, and 10 of U.S. Letters Patent 4,641,166 and claims 1, 6, 14, 15, 18, 27, and 37 of U.S. Letters Patent B1 4,352,724. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 29, 1997, *ordered*, That

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuits or products containing same by reason of infringement of claims 1, 2, 3, 8, 9, or 10 of U.S. Letters Patent 4,641,166 or claims 1, 6, 14, 15, 18, 27, or 37 of U.S. Letters Patent B1 4,352,724, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Fujitsu Limited, 6–1, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100, Japan

Fujitsu Microelectronics, Inc., 3545 North First Street, San Jose, California 95134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., Samsung Main Building 250, 2–Ka, Taepyung-Ro, Chung-Ku, Seoul, 100–742 Korea

Samsung Semiconductor, Inc., 3655 North First Street, San Jose, California 95134.

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401-M, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 30, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary,

[FR Doc. 97–29269 Filed 11–4–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–394]

Certain Screen Printing Machines, Vision Alignment Devices Used Therein, and Component Parts Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Gail Usher, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3152.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on February 27, 1997, on behalf of complainant MPM Corporation (MPM) of Franklin, Massachusetts. 62 FR 10072 (March 5, 1997). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, and component parts thereof by reason of infringement of claims 1, 2, 3, 4, 11, 18, and 21 of U.S. Letters Patent 5,060,063, and claims 1 and 7 of U.S. Letters Patent Re. 34,615. The Commission named DEK Printing Machines Limited and DEK USA Inc. (collectively, DEK) as respondents.

On October 3, 1997, complainant and respondents filed a joint motion to terminate the investigation based on a settlement agreement. On October 6, 1997, the presiding ALJ granted the motion and issued an ID (Order No. 13) terminating the investigation on the basis of the settlement agreement. The ALJ found that there was no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: October 28, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–29268 Filed 11–4–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board:

Kathryn Higgins
Joseph Juarez

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Human Resources, Room C5526, U.S. Department of Labor, Fances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 219–6551.

Signed at Washington, D.C., this 28th day of October, 1997.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 97–29207 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,772; CW Sportswear, Inc., Tellico Plains, TN

TA–W–33,766; Versa Technologies, Inc., Moxness Products Div., Wausau, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,829; Trans World Airlines, Kansas City Overhaul Base, Kansas City, MO

TA–W–33,856; Echo Bay Management Corp., Englewood CO

TA–W–33,843; Lummi Casino, A Div. of Lummi Indian Business Council, Bellingham, WA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,813; BASF Corp., Coatings and Colorants Div., Morganton, NC

TA–W–33,479; G.E. Medical Systems, Milwaukee, WI

TA–W–33,720; Editorial America, Virginia Gardens, FL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,519; Hays Wheels International, Inc., Romulus, MI

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sale or production.

TA–W–33,780; The Coleman Co., Inc., Coleman Powermate Div., Hastings, NE

TA–W–33,842; Applied Molded Products Corp., Watertown, WI

TA–W–33,831; Comsat RSI Plersys, Corinth, MS

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,771; Tara Lee Sportswear, New Berlin, PA: August 18, 1996.

TA–W–33,714; Norway Footwear Corp., Norway, ME: July 25, 1996.

TA–W–33,631; Flexel, Inc., Covington, IN: June 23, 1996.

TA–W–33,446, TA–W–33,447, TA–W–33,448 & TA–W–33,449; Quarles Drilling Corp., Headquartered in Tulsa, OK, Oklahoma City, OK, Houston, TX and Houma, LA: April 15, 1996.

TA–W–33,808; Magnetek, Inc., Huntington, IN: July 7, 1996.

All workers of Magnetek, Inc., Huntington, IN engaged in the production of electronic and electrical power conversion devices are eligible to apply for trade adjustment assistance.

TA–W–33,679; Devil Dog Manufacturing, Bunn Manufacturing Co. Div., Newton Grove, NC: July 18, 1996.

TA–W–33,809; 3C Alliance L.L.P., Mebane, NC: August 21, 1996.

TA–W–33,699; General Cable Corp., Montoursville, PA: June 17, 1996.

TA–W–33,836; Arnold Palmer Golf Bag Div. a Div. of Arnold Palmer Golf Co., Pocahontas, AR: September 5, 1996.

TA–W–33,537; Binder Bos., Inc., Ridgefield, NJ: May 12, 1996.

TA–W–33,599; H.H. Cutler Col, Statesboro, GA: June 19, 1996.

TA–W–33,695; Magna Interior Systems, Del Rio, TX: May 22, 1996.

TA–W–33,822; A, B, C; Dana Design Limited, Bozeman, MT, Livingston, MT, and Belgrade, MT: August 26, 1996.

TA–W–33,709; N.G.N., Inc., Reading, PA: July 21, 1996.

TA–W–33,816; Seymour Housewares Corp., Mooresville, NC: August 28, 1996.

TA–W–33,864 & A; Sweetheart Cup Co., Springfield MO & Riverside, CA: September 22, 1996.

TA–W–33,790; Bassett-Walker, Inc., North Wilkesboro Div., North Wilkesboro, NC: August 20, 1996.

TA–W–33,877; Electrohome, Inc., Display Technologies Div., Carthage, MO: September 30, 1996.

TA–W–33,499; Thypin Steel Corp., Blasdell, NY: May 2, 1996.

TA–W–33,850; Todd Uniform, Inc., Bernice, LA: September 19, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance hereinafter called NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01899; Remington Apparel Co., Inc., Graham, TX
NAFTA–TAA–01705; Best Power, Div. of General Signal Power Systems, Inc., Necedah, WI
NAFTA–TAA–01718; Jet Farms, Loxahatchee, FL
NAFTA–TAA–01760; Brooks Tropicals, Inc., Homestead, FL
NAFTA–TAA–01789; Barnett Farms, Immokalee, FL
NAFTA–TAA–01781; RCM Converters, Inc., El Paso, TX
NAFTA–TAA–01729; J.E.M., West Palm Beach, FL
NAFTA–TAA–01757; Richard Miller, d.b.a. Miller Contracting & Management Belle Glade, FL
NAFTA–TAA–01885; Ramsay Fabrics, Inc., New York, New York
NAFTA–TAA–01930; Anvil Knitwear, Inc., Gibson Plant, Gibson, NC
NAFTA–TAA–01859; Stanwood Mills, Inc., Slatington, PA
NAFTA–TAA–01732; Pero Family Farms, Del Ray Beach, FL

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01932; Trans World Airlines, Inc., Kansas City Overhaul Base, Kansas City, MO
NAFTA–TAA–01924; Echo Bay Management Corp., Englewood, CO
NAFTA–TAA–01911; Doran Texiles, Inc., Fox Wells Sales Div., New York, NY
NAFTA–TAA–01836; McCrory Corp., York, PA
NAFTA–TAA–01872; Philips Components, A Div. of Philips Electronics North America Corp., Jupiter, FL
NAFTA–TAA–01964; Payless Cashways, Inc., Wichita Falls, TX
NAFTA–TAA–01928; Lummi Casino, A Div. of Lummi Indian Business Council, Bellingham, WA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–01874; Wyeth-Ayerst Laboratories, American Home Products Corp., Bound Brook, NJ

A significant number or proportion of the workers (including workers in any agricultural firm or appropriate subdivision) did not become totally or partially separated as required for certification.

NAFTA–TAA–01731; Mecca Farms, Inc., Lantana, FL

A significant number or proportion of the workers (including workers in any agricultural firm or appropriate subdivision) did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01910; Heinz Bakery Products, Buffalo, NY: August 26, 1996.
NAFTA–TAA–01775; General Cable Corp. Montoursville, PA: June 17, 1996.
NAFTA–TAA–01782; Flexel, Inc., Covington, IN: June 23, 1996.
NAFTA–TAA–01841; Norton Co., Coated Abrasives, Watervliet, NY: July 22, 1996.
NAFTA–TAA–01907 & A,B,C,D; Dana Design Limited, Bozeman, MT, Livingston, MT, Lewistown, MT, and Belgrade, MT: August 26, 1996.
NAFTA–TAA–01832; Magna Interior Systems, Del Rio, TX: May 22, 1996.
NAFTA–TAA–01917; Seymour Housewares Corp., Mooresville, NC: August 28, 1996.
NAFTA–TAA–01864; Chase Packaging Corp., Portland, OR: July 31, 1996.
NAFTA–TAA–01870: Editorial America, Virginia Gardens, FL: July 24, 1996.
NAFTA–TAA–01865; SSF Building Materials, Inc., Northport, WA: August 11, 1996.
NAFTA–TAA–01937 & A; Sweetheart Cup Co., Springfield , MO and Riverside, CA: September 22, 1996.
NAFTA–TAA–01912; Collegiate Sportswear, Inc., Kingston, TN: August 27, 1996.
NAFTA–TAA–01903; Bassett-Walker, Inc., North Wilkesboro Div., North Wilkesboro, NC: August 26, 1996.
NAFTA–TAA–01925; Nukote International, Inc., Franklin, TN: September 17, 1996.
NAFTA–TAA–01882; Target Components, Inc., Kentwood, MI: August 5, 1996.
NAFTA–TAA–01908; Malone Manufacturing, Inc., Malone, NY: August 22, 1996.
NAFTA–TAA–01814; Chesterfield Manufacturing, Chesterfield, SC: August 9, 1996.
NAFTA–TAA–01223; Johnson & Johnson Medical, Inc., El Paso, TX: August 29, 1995.

I hereby certify that the aforementioned determinations were issued during the month of October, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 21, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29227 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,665; TA–W–33,665A]

Anvil Knitwear, Incorporated; Aynor, SC and Gibson, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for

Worker Adjustment Assistance on July 24, 1997, applicable to all workers of Anvil Knitwear, Incorporated, Aynor, South Carolina. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the petitioners, the Department reviewed the certification for workers on the subject firm. The workers are engaged in employment related to the production of T-shirts and tank tops. New information provided by the company shows that worker separations occurred at the subject firm's Gibson, North Carolina facility when it closed in September, 1997. The workers are engaged in employment related to the production of T-shirts. Accordingly, the Department is amending the certification to cover workers of Anvil Knitwear, Incorporated, Gibson, North Carolina.

The intent of the Department's certification is to include all workers of Anvil Knitwear, Incorporated adversely affected by increased imports.

The amended notice applicable to TA–W–33,665 is hereby issued as follows:

All workers of Anvil Knitwear, Incorporated, Aynor, South Carolina (TA–W–33,665) and Gibson, North Carolina (TA–W–33,665A) who became totally or partially separated from employment on or after May 24, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29220 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,949; TA–W–32,950]

Barclay Home Products; Cherokee, North Carolina and Robbinsville, North Carolina; Notice of Revised Determination on Reconsideration

On June 13, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration, applicable to workers and former workers of Barclay Home Products located in Cherokee and Robbinsville, North Carolina. The notice was published in the **Federal Register** on June 27, 1997 (62 FR 34712).

The petitioner presented evidence that the Department's survey of the subject firm's customers was incomplete.

The initial determination reported that the workers at the subject firm produced quilted comforters. New information provided to the Department on reconsideration reveals that the workers at the subject firm plants in Cherokee and Robbinsville, North Carolina were also producing quilts and quilt ensembles. The workers producing quilted comforters, quilts and quilt ensembles are not separately identifiable by product.

New information provided by the subject firm show that sales and production of quilts and quilt ensembles declined during the time period relevant to the investigation. Employment declined to zero when the subject firm plants closed in December 1996.

The quantity of aggregate U.S. imports of quilts increased from 1995 to 1996 and in the twelve month time period of July through June 1997 compared to the same twelve month time period of 1996. The value of aggregate U.S. imports of quilts declined from 1995 to 1996, but increased in the twelve month time period of July through June 1997 compared to the same twelve month time period of 1996.

On reconsideration, the Department conducted a survey of the subject firm's major declining customers. Survey findings show that from 1995 to 1996, a major customer stopped purchasing quilts and quilt ensembles from Barclay Home Products in favor of increased purchases of quilts and quilt ensembles from other domestic sources that were wholly manufactured in other foreign countries.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with quilts and quilt ensembles contributed importantly to the declines in sales or production and to the total or partial separation of workers of Barclay Home Products, Cherokee and Robbinsville, North Carolina.

In accordance with the provisions of the Act, I make the following certification:

All workers of Barclay Home Products, Cherokee, North Carolina (TA–W–32,949) and Robbinsville, North Carolina (TA–W–32,950), who became totally or partially separated from employment on or after November 7, 1995, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29222 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,430]

Bijur Lubricating Corporation, a Subsidiary of Vesper Corporation, Bennington, Vermont; Notice of Revised Determination on Reopening

On June 24, 1997, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Bijur Lubricating Corporation, a subsidiary of Vesper Corporation, located in Bennington, Vermont. The notice was published in the **Federal Register** on July 18, 1997 (62 FR 38584).

By letter of August 1, 1997, the United Electrical, Radio and Machine Workers of America (UE) Local 295, requested administrative reconsideration regarding the Department's denial of trade adjustment assistance for workers of the subject firm.

Workers at the subject firm were engaged in employment related to the production of automotive drive shafts, and lubrication equipment and accessories. The workers are separately identifiable by produce line.

New information provided by Bijur Lubricating Corporation shows that company sales of lubrication equipment and accessories decreased from May through June 1997 compared to May through June 1996. During this same time period, company imports of lubrication equipment and accessories increased relative to sales.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with lubrication equipment and accessories contributed importantly to the declines in sales or production and to the total or partial separation of workers of Bijur Lubricating Corporation, Bennington, Vermont. In accordance with the provisions of the Act, I make the following certification:

All workers of Bijur Lubricating Corporation, a subsidiary of Vesper Corporation, Bennington, Vermont, engaged

in employment related to the production of lubrication equipment and accessories, who became totally or partially separated from employment on or after March 27, 1996 are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 21st day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29217 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 14th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 10/14/97]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
33,880	Braden Manufacturing (Wkrs)	Ft. Smith, AR	09/19/97	Duct Work for Gas Turbines.
33,881	Corning, Inc. (AFGWU)	Erwin, NY	09/01/97	Catalytic Convertors.
33,882	Rockwell Automation (IUE)	Ashtabula, OH	09/26/97	Large AC Electric Motors.
33,883	Fleetwood Metal Ind. (USWA)	Tecumseh, MI	09/25/97	Metal Stampings.
33,884	Manhattan Shirt Co. (Co.)	Andalusia, AL	09/26/97	Men's Shirts.
33,885	R.G. Thomas Corp (Co.)	Palisades Park, NJ	09/15/97	Wire Forms for Semi-Conductors.
33,886	Lexington Apparel (Wkrs)	Lexington, TN	09/24/97	Men's Dress Slacks.
33,887	General Electric Co (IUE)	New Comerstown, OH	09/22/97	Coils for Motors.
33,888	Crown Pacific (Wkrs)	Redmond, OR	09/08/97	Wood components for windows, doors.
33,889	Elf Atochem North America (ICWU)	Tacoma, WA	09/29/97	Sodium Chlorate.
33,890	Wolverine World Wide (Wkrs)	Kirksville, MO	09/25/97	Men's Dress Shoes.
33,891	MCD International (WKRS)	Anniston, AL	09/22/97	Microwave Ovens.
33,892	Port Clyde Canning Co (Wkrs)	Rockland, ME	09/16/97	Canned Sardines.
33,893	Simpson Industries (IAM)	Jackson, MI	09/24/97	Machined Castings.
33,894	Payless Cashways (Wkrs)	Wichita Falls, TX	09/11/97	Pine Lumber.
33,895	Donnkenny Apparel (Wkrs)	Haysi, VA	09/30/97	Ladies' Apparel.
33,896	Applied Materials (Wkrs)	Austin, TX	10/11/97	Semi-Conductor Water Fabrication Equip.
33,897	Beloit Corp (UE)	Dalton, MA	09/29/97	Capital Equipment for Paper Industry.
33,898	Weyerhaeuser Wood Product (Co.)	Philadelphia, MS	10/03/97	Plywood Panels.
33,899	Gandalf Systems (Wkrs)	Delran, NJ	09/05/97	Networking Equipment.
33,900	Whirlpool Corporation (IUE)	Evansville, IN	10/03/97	Refrigerators.
33,901	Oregon Woodworking (Co.)	Bend, OR	10/03/97	Interior Flat Jambs.
33,902	Lehigh Furniture Co (Co.)	Marianna, FL	10/01/97	Bedroom Furniture.
33,903	Taylor Togs (Co.)	Micaville, NC	10/02/97	Blue Jeans.
33,904	Youngone America (Wkrs)	Miami, FL	09/10/97	Base Ball Jackets.
33,905	Loralie Originals (Co.)	Redding, CA	10/03/97	Wedding Gowns, Bridesmaids, & Prom Dress.

[FR Doc. 97–29225 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,491]

Coats American Rossville Plant, Rossville, Georgia; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 27, 1997, a petitioner requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance, applicable to workers of the subject firm. The denial notice was signed on September 9, 1997 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that equipment was shipped to Mexico to be used to produce like and directly competitive sewing threads which has affected the employment at Coats American in Rossville, Georgia.

In order for the Department to issue a worker group certification, all of the group eligibility requirements of Section 222 of the Trade Act must be met. Review of the investigation findings show that criterion (3) was not met. Imports of sewing threads did not contribute to the decline in sales, production, and employment at the Rossville, Georgia facility. Coats American did move production of sewing threads to Mexico, but the sewing threads being produced in Mexico are not being imported into the United States.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29223 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,550 and TA–W–33–550A]

Elbeco, Incorporated; City Shirt Company, Frackville, PA and Meyersdale Manufacturing, Meyersdale, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1997 applicable to all workers of City Shirt Company, Frackville, Pennsylvania. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Elbeco, Incorporated of Reading, Pennsylvania is the parent firm of City Shirt Company, Frackville, Pennsylvania and Meyersdale Manufacturing, Meyersdale, Pennsylvania. The company reports that worker separation have occurred at Meyersdale Manufacturing, Meyersdale, Pennsylvania. The workers are engaged in employment related to the production of men's and women's uniform shirts.

Accordingly, the Department is amending the certification to cover workers at Meyersdale Manufacturing, Meyersdale, Pennsylvania.

The intent of the Department's certification is to include all workers of Elbeco, Incorporated adversely affected by increased imports.

The amended notice applicable to TA–W–33,550 is hereby issued as follows:

All workers of Elbeco, Incorporated, City Shirt Company, Frackville, Pennsylvania (TA–W–33,550), and Meyersdale Manufacturing, Meyersdale, Pennsylvania (TA–W–33,550A) who became totally or partially separated from employment on or after May 22, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29210 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,644]

Gulton Graphic Instruments, East Greenwich, Rhode Island; Notice of Revised Determination on Reopening

On August 25, 1997, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Gulton Graphic Instruments located in East Greenwich, Rhode Island. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48887).

By letter of September 17, 1997, the company requested administrative reconsideration regarding the Department's denial. New information provided by Gulton Graphic shows that company imports of temperature controllers increased during the time period relevant to the investigation.

Workers at the subject firm are engaged in employment related to the production of data measuring and recording devices. The workers are not separately identifiable by product line.

Sales, production and employment at the East Greenwich production facility declined during the relevant time period.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with data measuring and recording devices, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Gulton Graphic Instruments, East Greenwich, Rhode Island. In accordance with the provisions of the Act, I make the following certification:

All workers of Gulton Graphic Instruments, East Greenwich, Rhode Island, who became totally or partially separated from employment on or after June 26, 1996 are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 22nd day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29212 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,411; TA–W–33,411A]

J.R. Simplot Company; Food Group, Caldwell, Idaho and J.R. Simplot Company; Food Division—Grand Rapids Plant, Wyoming, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 1997 applicable to all workers of the Food Group of J.R. Simplot Company in Caldwell, Idaho. The notice was published in the **Federal Register** on July 18, 1997 (62 FR 38584).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations are expected to occur on October 31, 1997 at the J.R. Simplot's Food Division-Grand Rapids plant, Wyoming, Michigan. The workers are engaged in employment related to the production of frozen potato products.

Accordingly, the Department is amending the certification to cover workers at the subject firm's Food Division-Grand Rapids plant, Wyoming, Michigan location.

The intent of the Department's certification is to include all workers of J.R. Simplot Company adversely affected by increased imports.

The amended notice applicable to TA–W–33, 411 is hereby issued as follows:

All workers of the Food Group of J.R. Simplot Company, Caldwell, Idaho (TA–W–33,441), and the Food Division-Grand Rapids Plant, of J.R. Simplot Company, Wyoming, Michigan (TA–W–33,411A) who became totally or partially separated from employment on or after March 24, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29221 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,498]

Lucent Technologies, Incorporated, Berg Electronics, Inc., Lee's Summit, Missouri; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 20, 1996, applicable to workers of Lucent Technologies, Incorporated located in Lee's Summit, Missouri. The notice was published in the **Federal Register** on September 13, 1996 (610 FR 48504).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Review of the certification shows that the name of the parent company, Berg Electronics, Inc., was inadvertently excluded from the certification. Accordingly, the Department is amending the worker certification to reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–32,498 is hereby issued as follows:

All workers of Lucent Technologies, Incorporated and Berg Electronics, Inc., Lee's Summit, Missouri, who became totally or partially separated from employment on or after June 19, 1995 through August 20, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29211 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,452]

Precision Scientific Division of Jouan Incorporated, Chicago, Illinois, Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 9, 1997, one of the petitioners requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice applicable to workers of the subject firm located in Chicago, Illinois was signed on June 2, 1997 and published in the **Federal Register** on June 27, 1997 (62 FR 34711).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Findings of the initial investigation showed that workers of Precision Scientific of Chicago, Illinois were engaged in employment related to the manufacture of CO–2 incubators, Thelco Ovens, vacuum pumps, and water baths. The Department's denial of TAA for workers of the subject firm was based on the fact that increases of imports of like and directly competitive did not contribute importantly to the worker separations and that the subject firm shifted production performed at the Chicago facility to a new facility in Winchester, Virginia.

The petitioner claims that all equipment used in the production of CO–2 incubators and vacuum pumps at the Chicago facility was not transferred to the Winchester facility but shipped to Europe and that this equipment will be used to manufacture like and directly competitive articles for import into the United States.

The company official reports that the equipment was not shipped to Europe but sold at auction in Chicago on August 7, 1997. The sale was confirmed by the company handling the auction.

Further, the shipment of equipment to another country is not a sufficient reason to conclude that the products

produced on that equipment will be imported into the United States at some point in the future and, thus, be a significant reason to conclude that potential future imports contributed significantly to the previous employment declines at Precision Scientific.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29214 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 446; TA–W–33, 447; TA–W–33, 448; TA–W–33, 449]

Quarles Drilling Corporation Headquartered in Tulsa, Oklahoma and Quarles Drilling Corporation Operating at Various Locations in the Following States: Oklahoma (Except Tulsa); Texas; Louisiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 12, 1997, applicable to workers of Quarles Drilling Corporation, headquartered in Tulsa, Oklahoma, Oklahoma City, Oklahoma, Houston, Texas and Houma, Louisiana. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm location in Houston, Texas. All workers at Quarles Drilling Corporation are engaged in employment related to the production of crude oil and natural gas. Findings on review show that the Department inadvertently limited the certification to workers at the subject firm locations in Tulsa and Oklahoma City, Oklahoma, Houston, Texas, and Houma, Louisiana. It was the intent of the Department's certification to include all workers of Quarles Drilling at various locations within the States of Oklahoma, Texas and Louisiana. Accordingly, the Department is amending the worker certification to reflect this matter.

The amended notice applicable to TA–W–33, 446 is hereby issued as follows:

All workers of Quarles Drilling Corporation, headquartered in Tulsa, Oklahoma (TA–W–33, 446), and operating at various locations in the following States: Oklahoma, except Tulsa, (TA–W–33, 447), Texas (TA–W–33, 448), and Louisiana (TA–W–33, 449) engaged in employment related to the production of crude oil and natural gas, who became totally or partially separated from employment on or after April 15, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 27th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29215 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,654]

Webster Lens Company, Webster, Massachusetts, Notice of Revised Determination on Reopening

On August 8, 1997, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Webster Lens Company located in Webster, Massachusetts. The notice was published in the **Federal Register** on August 8,1997 (62 FR 48887).

By letter of August 14, 1997, Mr. Mauno A. Petajasoja, a petitioner, requested administrative reconsideration regarding the Department's denial of trade adjustment assistance for workers of the subject firm. Workers at the subject firm were engaged in employment related to the production of eyeglass lenses. The workers are not separately identifiable by product line.

New information provided by Webster Lens Company and one of its suppliers shows that company was purchasing through a broker eyeglass lenses which were manufactured overseas and being imported into the U.S.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with eyeglass lenses contributed importantly to the declines in sales or production and to the total or partial separation of workers of Webster Lens Company, Webster, Massachusetts. In accordance with the provisions of the Act, I make the following certification:

All workers of Webster Lens Company of Webster, Massachusetts engaged in employment related to the production of eyeglass lenses, who became totally or partially separated from employment on or after June 24, 1996 are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1976.

Signed in Washington, DC, this 22nd day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29216 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,654]

Webster Lens Company Webster, Massachusetts; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 14, 1997, Mr. Mauno A. Petajasoja, a petitioner, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligiblity to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–33,654. The denial notice was signed on August 8, 1997 and published in the **Federal Register** on September 17, 1997 (62 FR 48887).

The Petitioner asserts that there are imports of like and directly competitive articles from foreign sources and that these imported products are being obtained by the subject company from another domestic source.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 9th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29226 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,655]

White Cap, Incorporated, Hayward, California; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 17, 1997, the Glass, Molders, Pottery, Plastics & Allied Workers International Union requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance, applicable to workers of the subject firm. The denial notice was signed on August 25, 1997 and was published in the **Federal Register** on September 17, 1997 (62 FR 48887).

Pursuant to 29 CFR 90.18(c) reconsideration may be grated under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that customers of the subject firm were being serviced by products made in Mexico.

In order for the Department to issue a worker group certification, all of the group eligibility requirements of Section 222 of the Trade Act must be met. Review of the investigation findings show that criterion (3) was not met. Layoffs at the subject firm were the result of the consolidation of metal bottle and jar cap production from the subject firm into two other company-owned plants located domestically.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 27th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29213 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Extension Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden will be approximately 10 hours per annual response and we anticipate 56 responses with no capital/start-up costs, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the Planning Guidance and Instructions for Submission of Annual State Plans for the Welfare-to-Work Formula Grants.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 5, 1998.

The Department of Labor is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, ATTENTION: Janice Davis, 200 Constitution Avenue, N.W., Room S–5513, Washington, D.C. 20210, 202–219–0181 extension 155 (this is not a toll free number) and/or via e-mail davisj@doleta.gov; fax number is 202–219–0376.

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorized the U.S. Department of Labor to provide Welfare-to-Work (WtW) Grants to States and local communities to provide transitional employment assistance to move Temporary Assistance for Needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. In order to receive formula grant funds, the statute provides that the State must submit a plan for the administration of the WtW grant. This Planning Guidance and Instructions for Submission of Annual State Plans addresses the information required from States which will enable them to qualify for the formula grant funds. Separate guidance will be issued for both the grants to the Indian tribes and the competitive grants.

II. Current Actions

This request has currently been approved under an emergency clearance not to exceed March 31, 1998, this extension is needed in order to complete the collection of this information.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions for Submission of Annual State Plans for Welfare-to-Work Formula Grants.

OMB Number: 1205–0382.

Affected Public: State and local governments.

Total Respondents: 56.
Frequency: Annually.
Total Responses: 56.
Average Time per Response: 10 hours.
Estimated Total Burden Hours: 560.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 30, 1997.

Peter E. Rell,

Director, Welfare-to-Work Grant Program Implementation Team.

[FR Doc. 97–29208 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01683]

Baroid Drilling Fluids, Incorporated, a Subsidiary of Cimbar Performance Materials, Potosi, Missouri; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on June 3, 1997 in response to a petition filed on behalf of workers at Baroid Drilling Fluids, Incorporated in Potosi, Missouri.

The petitioning organization requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29209 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announced the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than November 17, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than November 17, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, DC, this 24th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Frolic Footwear (Wkrs)	Jonesboro, AR	08/22/97	NAFTA–1,898	Footwear.
Remington Apparel (Co.)	Graham, TX	08/27/97	NAFTA–1,899	Men's neckwear.
Perfect Circle—Sealed Power Division (UAW).	Rochester, IN	08/11/97	NAFTA–1,900	Cylinder liners (piston sleeves).
Ergodyne Corporation (Wkrs)	Pence, WI	08/27/97	NAFTA–1,901	Gloves, tennis elbows and wrist braces.
General Electric (IUE)	Ft. Wayne, IN	08/25/97	NAFTA–1,902	Motors, battery track, transformer.
Bassett Walker (Co.)	North Wilkesboro, NC	08/26/97	NAFTA–1,903	T-shirts, sweatsuite.
Thomson Consumer Electronics (IBEW)	St. Bloomington, IN	08/11/97	NAFTA–1,904	Television assembly.
Thomas and Betts (Wkrs)	Sanford, ME	08/26/97	NAFTA–1,905	Terminal blocks and plastic molds.
Prewash and Pressing Services (Co.)	El Paso, TX	09/02/97	NAFTA–1,906	Prewash, stone wash and press jeans.
Dana Design Limited (Co.)	Bozeman, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Livingston, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Lewistown, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Belgrade, MT	09/02/97	NAFTA–1,907	Backpacks.
Malone Manufacturing (Wkrs)	Malone, NY	09/03/97	NAFTA–1,908	T-shirts and sweat pants.
Union City Body (UAW)	Union City, IN	09/03/97	NAFTA–1,909	Delivery vans.
Heinz Bakery Products (BCTW)	Buffalo, NY	09/03/97	NAFTA–1,910	Frozen unbaked sweet goods.
Dorn Textiles (Wkrs)	New York, NY	09/03/97	NAFTA–1,911	Woven fabric.
Collegiate Sportswear (Wkrs)	Kingston, TN	09/03/97	NAFTA–1,912	Sports jerseys.
Fisher Rosemount Petroleum (Co.)	Statesboro, GA	09/04/97	NAFTA–1,913	Magnetic flow meters.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Forsyth Sales (Co.)	Greensboro, NC	09/05/97	NAFTA–1,914	Supplied and repaired sewing machines.
Whisper Soft Mills (Wkrs)	Wallace, NC	09/04/97	NAFTA–1,915	Sheet sets, wall borders, tablecloths.
Irwin Manufacturing (Co.)	Alma, GA	09/05/97	NAFTA–1,916	Infant bedding.
Seymour Housewares (Wkrs)	Mooresville, NC	09/05/97	NAFTA–1,917	Laundry sorters, ironing board covers.
Elkin Valley Apparel (Wkrs)	Elkins, NC	09/15/97	NAFTA–1,918	Ladies sportswear.
Applied Molded Products (UBC)	Watertown, WI	09/09/97	NAFTA–1,919	Fiberglass reinforced plastics.
Hillsboro Glass (GMP)	Hillsboro, IL	09/05/97	NAFTA–1,920	Amber glass bottles.
Kimberly Clark (UPIU)	Oconto Falls, WI	07/09/97	NAFTA–1,921	Pulp.
Solomon Company (The) (Co.)	Leeds, AL	09/11/97	NAFTA–1,922	Men's dress slacks.
Sew More (Wkrs)	Albemarle, NC	09/05/97	NAFTA–1,923	T-shirts, sweatshirts.
Echo Bay Management (Wkrs)	Englewood, CO	09/17/97	NAFTA–1,924	Administrative duties supporting mining.
Nukote International (Wkrs)	Franklin, TN	09/17/97	NAFTA–1,925	Ink ribbon & ink jet cartridges.
General Electric Company (Wkrs)	Salem, VA	09/18/97	NAFTA–1,926	Material handling production.
Dana Corporation (Wkrs)	Reading, PA	09/19/97	NAFTA–1,927	Truck side rails, Ford pick-up frames.
Lummi Casino (Wkrs)	Bellingham, WA	09/10/97	NAFTA–1,928	Gambling services.
Trutom (US) Limited (Wkrs)	Albany, NY	09/15/97	NAFTA–1,929	Specialized testing service.
Anvil Knitwear (Wkrs)	Gibson, NC	09/12/97	NAFTA–1,930	T-shirts and tanktops.
Stanley Works (The) (USWA)	York, PA	09/17/97	NAFTA–1,931	Hand saws, hacks saws, hand tools.
Trans World Airlines (IAMAW)	Kansas City, MO	09/22/97	NAFTA–1,932	Repair and maintenance on aircraft.
CAE Screenplates (Co.)	Glens Falls, NY	09/22/97	NAFTA–1,933	Stainless steel screen plates.
Great American Products (Wkrs)	Broadview, IL	09/22/97	NAFTA–1,934	Belt buckles.
Jansport (Wkrs)	Burlington, WA	09/23/97	NAFTA–1,935	Sporting goods.
Ace Metal Fabricators (IBT)	Bronx, NY	09/22/97	NAFTA–1,936	Alarm doors, brackets to hold motors.
Sweetheart Cup (IBEW)	Springfield, MO	09/24/97	NAFTA–1,937	Paper Cups.
Sweetheart Cup (IBEW)	Riverside, CA	09/24/97	NAFTA–1,937	Paper cups.
California Curves (Wkrs)	Temecula, CA	09/29/97	NAFTA–1,939	Wooden Cabinets.
Cabot Oil and Gas (Co.)	Carlton, PA	09/29/97	NAFTA–1,939	Oil and gas.
Elf Atochem North America (ICWU)	Tacoma, WA	09/29/97	NAFTA–1,940	Industrial chemicals (sodium chlorate).
F.W. Woolworth (Wkrs)	Berwyn, IL	09/30/97	NAFTA–1,941	Retail business.
General Motors (UAW)	Danville, IL	09/30/97	NAFTA–1,942	Castings.
IDE Interstate (Wkrs)	Jamaica, NY	10/03/97	NAFTA–1,943	Genevic.
Fleetwood Metals Industries (USWA)	Tecumseh, MI	09/30/97	NAFTA–1,944	Metal stamping.
Simpson Industries (IAM)	Jackson, MI	09/24/97	NAFTA–1,945	Automotive components, brake drums, etc.
Braden Manufacturing (Wkrs)	Ft. Smith, AR	10/04/97	NAFTA–1,946	Gas turbine.
Simpson Industries (Co.)	Gladwin, MI	9/22/97	NAFTA–1,947	Isolators and dampers.
Texas Instruments (Wkrs)	Central Lake, MI	10/02/97	NAFTA–1,948	Thermal overlad devices.
Almark Mills (Co.)	Dawson, GA	10/03/97	NAFTA–1,949	T-shirts, boxers, shorts.
Fiskars (Wkrs)	Fergus Falls, MN	10/06/97	NAFTA–1,950	Surge protection products.
Wolverine World Wide (Wkrs)	Kirksville, MO	10/07/97	NAFTA–1,951	Men's & women's work boots & shoes.
JLG Industries (Wkrs)	McConnellsburg, PA	10/06/97	NAFTA–1,952	Harnesses.
General Binding (Co.)	Sparks, NV	10/03/97	NAFTA–1,953	Bates rotary, flat files.
Taylor Togs (Co.)	Micaville, NC	10/07/97	NAFTA–1,954	Cut, sew and finishing of bottoms.
Best Manufacturing (Co.)	Salisbury, NC	10/07/97	NAFTA–1,955	Tee shirts and sweatshirts.
Stroh Brewery (IAM)	St. Paul, MN	10/08/97	NAFTA–1,956	Beer and beverages.
Lees Manufacturing (Co.)	Cannon Falls, MN	10/09/97	NAFTA–1,957	Children's sleepwear and sportswear.
Oregon Woodworking (Co.)	Bend, OR	10/08/97	NAFTA–1,958	Door jambs.
Bourns (Wkrs)	Riverside, CA	10/01/97	NAFTA–1,959	Electronic assemblies.
Loralie Originials (Wkrs)	Redding, CA	09/25/97	NAFTA–1,960	Bridal, prom and formal ladies wear.
DQ Investment Corporation (Co.)	San Diego, CA	10/01/97	NAFTA–1,961	Data base information.
Basler Electric (Wkrs)	Corning, AR	10/09/97	NAFTA–1,962	Class II transformer.
Apparel Brands (Co.)	Wrightsville, GA	10/10/97	NAFTA–1,963	Men's and ladies uniform pants & shorts.
Payless Cashways (Wkrs)	Wichita Falls, TX	10/08/97	NAFTA–1,964	Retail sales of building materials.
Robinson (Wkrs)	Parsons, TN	10/13/97	NAFTA–1,965	Sportswear.
Hamburg Shirt—Bernstein and Sons (Co.).	Hamburg, AR	10/08/97	NAFTA–1,966	Knit and woven shirts.
University Energy (Wkrs)	San Diego, CA	10/10/97	NAFTA–1,967	Hydro electric power.
Frolic Footwear (Wkrs)	Walnut Ridge, AR	10/13/97	NAFTA–1,968	Footwear.
Timberline Lumber (Wkrs)	Kalispell, MT	10/02/97	NAFTA–1,969	Studs.
Tru Stitch Footwear (UFCW)	Malone, NY	10/14/97	NAFTA–1,970	Soft moccasin and boot style slippers.
Reef Gear (Wkrs)	Marine City, MI	10/14/97	NAFTA–1,971	Output and input gear.
Fedco Automotive Components (Wkrs)	Buffalo, NY	10/15/97	NAFTA–1,972	Car heaters, heater cores.
Oneita Industries (Co.)	Fayette, AL	10/16/97	NAFTA–1,973	T-Shirts.
Dana Corporation (USWA)	Reading, PA	10/08/97	NAFTA–1,974	Truck frame.
Lehigh Furniture (Co.)	Marianna, FL	10/16/97	NAFTA–1,975	Wooden bedroom furniture.
International Paper (UPIU)	Erie, PA	10/17/97	NAFTA–1,976	Paper products.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Rockwell Automation (IUE)	Ashtabula, OH	10/21/97	NAFTA–1,977	AC electric motors.
Bonita Packing (Wkrs)	Bonita Spring, FL	10/21/97	NAFTA–1,978	Tomatoes.
Kysor Michigan Fleet—Scott (UAW)	Scottsburg, IN	10/21/97	NAFTA–1,979	Auxiliary fuel tanks.
Woodgrain Millwork (Wkrs)	Lakeview, OR	10/20/97	NAFTA–1,980	Moulding.
Carolyn of Virginia (Co.)	Bristol, VA	10/20/97	NAFTA–1,981	Women's clothing.
Ellen B. Sport (Co.)	Whitehall, I:	10/17/97	NAFTA–1,982	Nightwear and dresses.

[FR Doc. 97–29224 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—01747]

John F. Spooner Farms Belle Glade, Florida; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 27, 1997 in response to a petition filed on behalf of workers at John F. Spooner Farms, located in Belle Glade, Florida (NAFTA–01747).

The Florida Department of Labor and Employment Security has been unable to locate the company official at the subject firm. Consequently, the Department of Labor cannot conduct an investigation to render a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974.

Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29218 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01092]

Lucent Technologies, Incorporated, Berg Electronics, Inc., Lee's Summit, Missouri; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 9, 1996, applicable to all workers of Lucent Technologies, Incorporated located in Lee's Summit, Missouri. The notice was published in the **Federal Register** on March 12, 1996 (61 FR 11474).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The petitioners, are employees of Berg Electronics, Inc., producing paddle board connectors and cable assemblies at Lee's Summit. The workers at the subject plant are not separately identifiable by product line. Review of the certification shows that the name of the parent company, Berg Electronics, Inc., was inadvertently excluded from the certification. Based on this information, the Department is amending the worker certification to include workers of Berg Electronics, Inc., Lee's Summit, Missouri.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–01092 is hereby issued as follows:

All workers of Lucent Technologies, Incorporated and Berg Electronics, Inc., Lee's Summit, Missouri, who became totally or partially separated from employment on or after June 19, 1995 through August 9, 1998, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 8th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29219 Filed 11–4–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. McElroy Coal Company

[Docket No. M–97–112–C]

McElroy Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.312(d) (main mine fan examinations and records) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner requests a variance to permit the testing of the function of an automatic closing door without stopping the fan. The petitioner proposes to test the operation of the fan closing door at least every 31 days, by rotating the test frame outward from its normal resting position until it contacts the flow reversal prevention door, by rotating the test frame in order to test the function of the bearings supporting the flow reversal prevention door, and to have the persons conducting the test visually observe the movement of the test frame and the contact between the test frame and the flow reversal prevention door, and to visually observe the general maintenance of the approved design. The petitioner asserts that the proposed alternative method would provide at least the same

measure of protection as would the mandatory standard.

2. Freeman United Coal Mining Company

[Docket No. M–97–113–C]

Freeman United Coal Mining Company, 1999 Wabash Avenue, Suite 200B, Springfield, Illinois 62704–5364 has filed a petition to modify the application of 30 CFR 75.332 (working sections and working places) to its Crown II Mine (I.D. No. 11–02236) located in Macoupin County, Illinois. The petitioner requests a variance to allow one continuous miner on a super section to cleanup the previously mined working face while the other continuous miner starts to cut and load coal from another working face on the same working section, on the same split of air. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Roberts Bros. Coal Co., Inc.

[Docket No. M–97–114–C]

Roberts Bros. Coal Co., Inc., P.O. Box 397, Mortons Gap, Kentucky 42440 filed a petition to modify the application of 30 CFR 75.503 (preshift examination) to its Cardinal # 2 Underground Mine (I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner proposes to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment, to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. The petitioner asserts that in the event of a battery fire, the spring-loaded device can be disconnected much faster and safer than a padlock; and that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. BJM Coal Company

[Docket No. M–97–115–C and M–97–116–C]

BJM Coal Company, 158 Turnpike Road, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Camp Creek Deep Mine (I.D. No. 46–08288), and its No. 9B Mine (I.D. No. 46–08284) both located in Webster County, West Virginia. The petitioner requests a variance to allow the use of a spring-loaded locking device instead of padlocks to secure battery plugs to machine mounted receptacles which would prevent the threaded lock ring on a plug from turning and coming loose unintentionally. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Cobre Mining Company

[Docket No. M–97–06–M]

Cobre Mining Company, P.O. Box 424, Hanover, New Mexico 88041 has filed a petition to modify the application of 30 CFR 57.11055 (inclined escapeways) to its Continental Underground Complex (I.D. No. 29–00233) located in Grant County, New Mexico. The petitioner proposes to modify a distance of 326 feet in the #2 Shaft between the 1000 foot level and the 1300 foot level to provide a secondary escapeway. An interim level at the 1200 foot level of the #2 Shaft would break the portion of the escapeway into 200 feet and 126 feet portions, which would be well under the 300 foot limit. The petitioner requests a variance to allow 326 feet of vertical extent versus 300 feet, or a decision that the 1200 foot level of the #2 Shaft portions the 326 feet into smaller, legal portions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Stillwater Mining Company

[Docket No. M–97–07–M]

Stillwater Mining Company, HC 54, Box 365, Nye, Montana 59061 has filed a petition to modify the application of 30 CFR 57.14107(a) (moving machine parts) to its Stillwater Mine (I.D. No. 24–01490) located in Stillwater County, Montana. The petitioner proposes to fence around the magnetic belt located on the end of the feed conveyor of the 3100 level crusher station to prevent persons from coming into direct contact with the belt pulleys or the flying tramp iron ejected from the conveyor; to post signs for use by ''Authorized Personnel Only'', and only such persons would be allowed to enter the area when the belt is locked out. The petitioner states that it proposed alternative method would not cause a diminution of the safety to the operators. In addition, petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Morton International, Inc.

[Docket No. M–97–08–M]

Morton International, Inc., P.O. Box 1496, New Iberia, Louisiana 70562–1496 has filed a petition to modify the application of 30 CFR 57.11050 (escapeways and refuges) to its Weeks Island Mine (I.D. No. 16–00970) located in Iberia County, Louisiana. The petitioner proposes to use a man cage where personnel are transported through the service shaft during a mine evacuation and through the production shaft on inserts placed in the production skips during secondary evacuation. The petitioner proposes to extend the concrete liner within the service shaft and the concrete liner within the production shaft upon completion of the service shaft to provide additional safety; to stop all work and evacuate the mine if either escapeway becomes disabled for more than one hour during shaft construction and resume work when both escapeways become available; to install an underground refuge chamber in the main intake airway at the 1200 Level shaft station for additional evacuation protection. The petitioner states that the refuge chamber would be large enough to accommodate at least ten persons and would be reachable from any mine workplace within thirty minutes; that the entire 1200 Level shaft station would be isolated from exhaust air by closing the ventilation doors if necessary; and that backup power source would be on the surface for mine ventilation in the event of incoming utility power loss. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Morton International, Inc. and Miners, Inc.

[Docket No. M–97–09–M]

Morton International, Inc., and Miners, Inc., P.O. Box 1496, New Iberia, Louisiana 70562–1496 has filed a petition to modify the application of 30 CFR 57.11050 (escapeways and refuges) to its Markel Mine (I.D. No.16–00512) located in Iberia County, Louisiana. Miners, Inc., is an independent contractor (MSHA I.D. No. M2C), performing work in the abandoned Markel Mine, owned by Morton Salt. The petitioners, Morton Salt and Miners, Inc., request a variance to allow a 6-foot wide secondary escapeway in the center of the Diamond Drift of the mine; a barricade consisting of ⅛ inch

diameter steel cable and suspended on steel posts on each side of the travelway to mark the route; and ''Keep Out'' signs to be posted on the boundary of the 6-foot wide escapeway every 250 feet along the travelway. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. North American Salt Company

[Docket No. M–97–10–M]

North American Salt Company, P.O. Box 10, Lydia, Louisiana 70569 has filed a petition to modify the application of 30 CFR 57.15031 (location of self-rescue devices) to its Cote Blanche Underground Salt Mine (I.D. No. 16–00358) located in St. Mary County, Louisiana. The petitioner requests a variance to allow supplies of self-rescue devices to be stored underground in strategic locations and readily accessible to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. ZCA Mines, Inc.

[Docket No. M–97–11–M]

ZCA Mines, Inc., P.O. Box 226, Hailesboro, New York 13645 has filed a petition to modify the application of 30 CFR 57.11050 (escapeways and refuges) to its Balmat Mine No. 4 (I.D. No. 30–01185) located in St. Lawrence County, New York. The petitioner requests a variance to allow the underground employees to report to the refuge chamber when one of the hoist becomes inoperable for more than one hour instead of evacuating the mine. The petitioner states that the No. 4 Mine personnel can evacuate from the hoisting facility at the No. 4 Mine and the No. 2 Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. North American Salt Company

[Docket No. M–97–12–M]

North American Salt Company, P.O. Box 10, Lydia, Louisiana 70569 has filed a petition to modify the application of 30 CFR 57.22603 (blasting from the surface II–A mines) to its Cote Blanche Underground Salt Mine (I.D. No. 16–00358) located in St. Mary County, Louisiana. The petitioner requests a modification of the mandatory standard to allow specially prepared and limited shots of a shaft segment to be taken while men are underground. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 5, 1997. Copies of these petitions are available for inspection at that address.

Dated: October 24, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–29189 Filed 11–3–97; 8:45 am]

BILLING CODE 4510–43–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

International Boundary and Water Commission Notice

AGENCY: Border Environment Cooperation Commission (BECC).

ACTION: Notice of public meeting.

SUMMARY: This notice announces the 14th public meeting of the BECC Board of Directors on Friday, December 5, 1997, from 9:00 am – 2:00 pm, at the Cibeles Convention Center, located at Blvd. Tomás Fernández No. 8450, in Cd. Juarez, Chihuahua.

FOR FURTHER INFORMATION CONTACT: M.R. Ybarra, Secretary, United States Section, International Boundary and Water Commission, telephone: (915) 534–6698; or Mr. Gonzalo Bravo, Public Participation Coordinator, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, Texas 79913, telephone: (011–52–16) 29–23–95; fax: (011–52–16) 29–23–97; e-mail: becc@cocef.interjuarez.com.

SUPPLEMENTARY INFORMATION: The U.S. Section, International Boundary and Water Commission, on behalf of the Border Environment Cooperation Commission (BECC), cordially invites the public to attend the 14th Public Meeting of the BECC Board of Directors, on Friday, December 5th, from 9:00 am–2:00 pm, at the Cibeles Convention Center, located at Blvd. Tomás Fernández NO. 8450, in Cd, Juarez, Chihuahua.

Proposed Agenda

1. Approval of Agenda (Action)
2. Approval of Minutes (Action)
3. Executive Committee Report (Information)
4. Manager's Report (Information)
5. 1997 Status Report
6. Technical Assistance Program Update
7. Consideration of Projects for Certification
   - Mexicali I and II
   —Public Comments
   —Certification Consideration (Action)
   - Jonathon Rogers
   —Public Comments
   —Certification Consideration (Action)
8. Complaints Procedures (Action)
9. General Public Comments

Anyone intersted in submitting written comments to the Board of Directors on any agenda item should send them to the BECC 15 days prior to the public meeting. Anyone interested in making a brief statement to the Board may do so during the public meeting.

Dated: October 30, 1997.

M.R. Ybarra,

Secretary, U.S. IBWC.

[FR Doc. 97–29235 Filed 11–4–97; 8:45 am]

BILLING CODE 4710–03–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: November 13, 1997, 1:30 p.m., Closed Session. November 13, 1997, 2:20 p.m., Open Session. November 14, 1997, 8:30 a.m., Open Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1225, Arlington, VA 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, November 13, 1997

Closed Session (1:30 p.m.–2:20 p.m.)

- Minutes, August 1997 Meeting.
- Personnel.
- NSB Public Service Award.
- Awards and Agreements.

Thursday, November 13, 1997

Open Session (2:20 p.m.–5:45 p.m.)

- Minutes, August 1997.
- Minutes, October 1997.
- Closed Session Agenda Items for February 1998.
- Chairman's Report.
- Director's Report.
- Reports from Committees.

- Important Notice 91.
- NSB Report on Graduate Education.
- Science and Engineering Indicators.
- Working Paper: ''Federal Funding of Scientific Research.''
- NSF Recompetition Policy.

Friday, November 14, 1997

Open Session (8:30 a.m.–11:30 p.m.)

- NSF Long Range Planning Review.
- Issues for Operating in Constrained Fiscal Environments.
- NSB Occasional Paper ''Publicly Funded Research.''
- Other Business.
- Adjourn.

Marta Cehelsky,

Executive Officer.

[FR Doc. 97–29357 Filed 11–3–97; 11:26 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Revisions to NSF Systems of Records: New Systems

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of revisions to 13 existing systems and the planned creation of two new systems. These revisions to current systems are being made to include altered and new routine uses, and to more accurately reflect the records contained therein. They are reprinted in their entirety. System NSF–7, ''Earnings and Tax Statement (W–2)'' is being deleted. The records described therein are covered by a more comprehensive system, NSF–22, ''NSF Payroll System.'' System NSF–41, ''Dissertation Advisors File'' is also being deleted. It is not longer being maintained.

The two new systems are:

NSF–65, ''NSF Vendor File,'' covers banking information used for direct deposit as required in the Debt Collection Improvement Act of 1996 to implement mandatory electronic payments for all obligations.

NSF–67, ''Invention, Patent and Licensing Documents,'' covers invention disclosures, applications, and licenses submitted by NSF employees, grantees, and contractors.

In accordance with the requirements of the Privacy Act, NSF has provided a report on the proposed systems of records to the Director of OMB; the Chairman, Senate Committee on Governmental Affairs; and the Chairman, House Committee Government Reform and Oversight.

DATES: Sections 552a(e)(4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect on December 5, 1997, unless modified by a subsequent notice to incorporate comments received from the public.

COMMENTS: Written comments should be submitted to Herman G. Fleming, NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, Room 485, Arlington, VA 22230.

Dated: October 31, 1997.

Herman G. Fleming,

Privacy Act Officer.

NSF–3

SYSTEM NAME:

Application and Account for Advance of Funds.

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, Voucher Unit, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address, amount requested, and voucher number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC, Chapter 57; 31 USC 1512; Department of the Treasury Fiscal Requirements Manual.

PURPOSE(S):

Establish and maintain Foundation records on administrative control of funds relating to requests for advance of funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. The Department of Treasury for payment of advance of funds.

2. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

3. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

4. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

5. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically.

RETRIEVABILITY:

The records are retrieved by Social Security Number.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours. A password is needed for access to the computer system.

RETENTION AND DISPOSAL:

Destroyed four years after settlement of advance.

SYSTEM MANAGER(S) AND ADDRESS:

Director Division of Financial Management, National Science Foundation, 201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information is received from individual and his/her office.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–10

SYSTEM NAME:

Employee's Payroll Jacket.

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, Payroll Section, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF current and former employees (including consultants).

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions, Federal and State Withholding Certificates, Bond Authorizations, Health Benefit Forms, Life Insurance Forms, Allotment Forms, and other similar items related to an employee's pay and deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part III, Government Organization and Employees; Department of the Treasury Fiscal Requirements Manual; GAO manual, Title 6—Pay, Leave and Allowances

PURPOSE(S):

This system enables the NSF to maintain all data which apply to the salary, taxes, benefits and withholdings of each NSF employee and consultant in a single location, and ensures that appropriate salary adjustments are made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Health insurance carriers for identifying employees covered by plan.
2. Other agencies upon transfer of employee to identify charitable allotments.
3. Financial institutions for the purpose of direct deposit.
4. The Department of Treasury for the purpose of locating missing bonds or paychecks.
5. The Department of Treasury and to the taxing authorities in the employee's state of residence (W–4 Forms).
6. The NSF Payroll System, which is described in NSF–22. The routine uses listed there are also applicable to this record system.
7. Another Federal agency, a court, or a party in liitgaiton before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.
8. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.
9. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.
10. The Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset system:

For use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement.

For release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

For release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 12, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

11. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.
12. Officials of labor organizations recognized under 5 U.S.C. chapter 71, when relevant and necessary to their duties of exclusive representation.
13. The Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, investigation of alleged or possible prohibited personnel practices, and such other function's promulgated in 5 U.S.C. 1205 and 1206 or as may be authorized by law.
14. The Department of Labor in connection with an employee claim for compensation or an injury or illness.
15. The American Federation of Government Employees and Local 3403 in connection with union dues paid by members.
16. To the extent any of these records are duplicative of those described in OPM/GOVT–1 (General Personnel Records), the routine uses described therein are also applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folder.

RETRIEVABILITY:

Alphabetically by last name of employee.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

RETENTION AND DISPOSAL:

Destroyed five years after termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

NSF Personnel Office, and forms prepared by individual employees.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–13

SYSTEM NAME:

Fellowship Payroll.

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, Payroll Section, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Fellows under certain NSF Fellowship Programs being paid directly by the Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of fellowship award letter, acceptance form, starting certificates, and records of payments of stipends.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1861; Department of the Treasury Fiscal Requirements Manual;

GAO Manual, Title 6—Pay, Leave and Allowances.

PURPOSES:

This system enables the NSF to maintain all data that apply to the payment of fellowship payroll in a single location and ensures that appropriate payments are made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. The Department of Treasury for the purpose of issuing the payment directly to the financial account of the payee.

2. Financial institutions for purpose of direct deposit.

3. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

4. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

5. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Paper records maintained in file folders. Records are also maintained electronically.

RETRIEVABILITY:

Alphabetically by last name of Fellow.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

RETENTION AND DISPOSAL:

Destroyed four years after termination of fellowship.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information obtained from Fellow.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–16

SYSTEM NAME:

Individual Retirement Record (SF–2806.

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, Payroll Section, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NSF employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Salary, grade, status changes, yearly and year to date retirement deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8401. Government Organization and Employees; Department of the Treasury Fiscal Requirements Manual; GAO Manual, Title 6—Pay, Leave and Allowances

PURPOSE(S):

This system enables the NSF to maintain all data that apply to the salary, and retirement withholdings of each NSF employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from the system may be disclosed to:

1. The Office of Personnel Management annually or when employee separates from NSF to update employee retirements records. Personnel Management when employee separates from NSF.

2. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

3. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its component; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

4. The contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

5. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Employee's payroll number.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

RETENTION AND DISPOSAL:

Retained until employee is separated then transferred to OPM.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management.

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information obtained from the Personnel Office on Payroll Summaries prepared every two weeks showing year-to-date amounts.

SYSTEM EXEMPTIONS FORM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–19

SYSTEM NAME:

Medical Examination Records for Service in the Polar Regions.

SYSTEM LOCATION:

National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Antarctic Support Associates (ASA) and subcontractors, 61 Inverness Drive East, Suite 300, Englewood, CO 80112; U.S. Antarctic facilities; Polar Ice Coring Office (PICO), University of Nebraska, Lincoln, Nebraska.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers all individuals being considered for Antarctic assignment (under the auspices of the USAP), or for assignment to selected, isolated locations in the Arctic region. Individuals covered may include NSF and other government agency employees, civilian contract employees, personnel conducting the research supported by NSF or other entities, and members of the uniformed services supporting NSF's polar research programs.

Note: Records concerning current and former federal employees are also covered by OPM/GOVT–10.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to pre-deployment physicals: Medical history, clinical test results (e.g., blood, urine analyses, EKGs); physical exam notes; dental exams, X-rays, dentist's notes; and notes by medical reviewers determining medical qualifications. Includes psychological screening records when performed on winter-over candidates, and any additional tests/evaluation associated with requests for medical waivers. Medical files, clinic notes, and associated records created in the course of providing medical treatment or consultation by any of the medical care providers in the Arctic or Antarctia.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401, *et seq.*, 42 U.S.C. 1870, 44 U.S.C. 3101.

PURPOSE(S)

The National Science Foundation's Office of Polar Programs is responsible for ensuring that personnel traveling to Antarctia under the auspices of the United States Antarctic Program (USAP) meet certain medical standards, as outlined in 45 CFR part 675 (62 FR 31521 (June 10, 1997). Those traveling to selected, isolated locations in the Arctic region must meet similar standards. Candidates for deployment must undergo a medical and dental examination to determine whether they are physically qualified for deployment. Candidates who anticipate spending the austral winter in Antarctica (where evacuation may be impossible) are subject to additional evaluation, including a determination of psychological adaptability to such an isolated environment. This medical screening process requires that certain medical records be generated on individuals participating in the USAP.

The records are used primarily for three purposes: (1) To determine the individual's fitness for Arctic/Antarctic assignment; (2) to assist in determining an appropriate course of medical/dental treatment should the individual seek medical care with any medical care provider while in the Arctic or Antarctica; and (3) to provide documentation for addressing quality of care issues associated with these medical functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Individuals involved in determining an individual's fitness for deployment, or in providing medical services or treatment. Such individuals include (a) designated medical care practitioners and their administrative support personnel involved in determining an individual's fitness for Arctic/Antarctic assignment, including waiver requests; and (b) medical care providers in NSF-supported stations and field camps in the polar regions where the individual is assigned;

2. The personal physician or examining physician of the individual about whom the records pertain when disclosure is necessary to obtain additional information necessary to make a determination on fitness, or provide medical treatment;

3. Medical experts either individually or as a panel to provide expertise and advice on quality of medical care issues in the polar regions;

4. Representatives of employing organizations, including academic institutions, and investigators on a grant (if a prospective field team member has requested a waiver) to inform them whether an individual is approved for deployment or not.

5. An emergency point of contact designated by the individual when the individual seeking deployment is unreachable and additional information is needed to order to make a determination on a waiver request before deployment deadlines, or when necessary to provide medical treatment during deployment;

6. Federal, state, or local agencies, or foreign governments when disclosure is necessary to obtain records in connection with an investigation by the NSF;

7. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding, or when NSF determines that the litigation or proceeding is likely to affect the Agency.

8. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in locked file cabinets or area with limited access. Records may also be prepared and maintained in electronic format with password protection.

RETRIEVABILITY:

The records are retrieved by the name of the individual or by the individual's social security number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. They are kept in locked file cabinets or locations with

limited access. Electronic records are password protected.

RETENTION AND DISPOSAL:

Except for those records covered by OPM/GOVT–10, records are destroyed approximately eight years after the individual's last Antarctic or Arctic deployment.

SYSTEM MANAGER(S) AND ADDRESS:

Safety and Health Officer, Office of Polar Programs. Point of contact: Associate Program Manager for Safety and Health, Polar Research Support Section, Office of Polar Programs, Office of the Director, National Science Foundation, 4201 Wilson Boulevard, Room 755, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains a record pertaining to the requesting individual, write to the system manager at the above address.

RECORD ACCESS PROCEDURES:

See notification procedure.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this system of records should write to the system manager at the above address.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from individuals who intend to deploy to the Arctic or Antarctica and from personal physicians and medical examiners of the deploying individuals; from NSF staff and NSF records; and from non-NSF persons and records, to the extent necessary to carry out the duties described in the NSF Medical Examination procedures. All individuals desiring to deploy to the Arctic or Antarctica under the auspices of the National Science Foundation must provide the requested information.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–22

SYSTEM NAME:

NSF Payroll System.

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, Payroll Section, 4201 Wilson Boulevard, Arlington, VA 22230. Backup files are maintained at off-site location- First Federal Corporation, 4910 Massachusetts Avenue, NW, Suite 16, Washington DC 20016.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF current and former employees (including consultants).

CATEGORIES OF RECORDS IN THE SYSTEM:

Salary, grade, Social Security Number, home address, time and attendance and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 55 and 63; Department of the Treasury Fiscal Requirements Manual; GAO Manual, Title 6—Pay, Leave and Allowances.

PURPOSE(S):

Computer System consisting of data base with all information necessary to prepare NSF payroll, purchase of savings bonds, compute leave balances, prepare W–2s, and other similar uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. The Internal Revenue Service and the Social Security Administration, and other taxing authorities (including such authorities as the employees state of residence.)

2. The Department of Treasury for issuance of salary payments.

3. Financial organizations for the purpose of direct deposit.

4. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

5. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding

6. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

7. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

8. Officials of labor organizations recognized under 5 U.S.C. chapter 71, when relevant and necessary to their duties of exclusive representation.

9. The Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, investigation of alleged or possible prohibited personnel practices, and such other function's promulgated in 5 U.S.C. 1205 and 1206 or as may be authorized by law.

10. The Department of Labor in connection with an employee claim for compensation or an injury or illness.

11. The American Federation of Government Employees and Local 3403 in connection with union dues paid by members.

12. The Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset system:

For use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement.

For release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

For release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 12, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

13. To state unemployment agencies in connection with claims for unemployment benefits.

14. To the extent any of these records are duplicative of those described in OPM/GOVT–1 (General Personnel Records), the routine uses described therein are also applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically. Individual folders are also maintained on each employee.

RETRIEVABILITY:

May be retrieved by employee number, Social Security Number or last name.

SAFEGUARDS:

NSF security guards. Building is locked during non-business hours when guard is not on duty. Room in which

records are kept is locked during non-business hours. A password is needed to access the computer system.

RETENTION AND DISPOSAL:

Employee information is deleted at the end of the year in which employee leaves the Foundation. Cumulative information is kept on master tapes and maintained in NSF and at off-site location and destroyed after five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information is taken from forms prepared by individuals, the Personnel Office and Integrated Time and Attendance System (ITAS).

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–23

SYSTEM NAME:

NSF Staff Biography.

SYSTEM LOCATION:

National Science Foundation, Office of Legislative and Public Affairs, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Executive NSF staff (Division Directors and above).

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information, position held, education, memberships, and publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870

PURPOSE(S):

To disseminate senior level officials biographical information when requested.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to newspapers, magazines, professional journals, and others.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Alphabetically by last name of employee.

SAFEGURARDS:

Building employs security guard. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

RETENTION AND DISPOSAL:

Records on individuals destroyed when they leave Foundation except in cases of extremely high level staff.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Public Affairs, Office of Legislative and Public Affairs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, 22230.

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information is received from individual.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–24

SYSTEM NAME:

Official Passports.

SYSTEM LOCATION:

National Science Foundation, Professional Travel Corporation (NSF Contractor) Room 275, 4201 Wilson Boulevard, Arlington VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NSF employees, consultants and invited guests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Date and place of birth, nationality, next of kin, height, color of hair and eyes, and photograph.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1870: 44 U.S.C. 3101.

PURPOSE(S):

To support official international visits by NSF staff, consultants and visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Embassy for purpose of issuing visas.
2. The State Department for disposition when the passport expires or the employee leases the Foundation.
3. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administration proceeding.
4. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or of its components; (b) and NSF employee in his/her official capacity; (c) an NSF employee is his/her individual capacity when the Department of Justice is Representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely the Agency.
5. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on diskettes and/or magnetic tapes.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours. Passports are kept in locked filing cabinet.

RETENTION AND DISPOSAL:

Passports expire after five years and are then sent to the State Department for disposition. Should employee retire or leave the Foundation before passport expiration, the passport are, passports are returned to the State Department for proper disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, Nation Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be notified in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information is received from individual.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NFS–34

SYSTEM NAME:

Integrated Time and Attendance System (ITAS).

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, Payroll Section, 4201 Wilson Boulevard, Arlington, VA 22230. Paper copies may be maintained in individual offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF current and former employees (including consultants).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include documents related to employee's attendance, leave, and overtime. It also includes Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapters 61 and 63; Department of the Treasury Requirements Manual; GAO manual, Title 6—Pay, Leave and Allowances

PURPOSE(S):

This system enables the NSF to maintain all data which apply to the time and attendance of each NSF employee. Information incorporated into the ''NSF Payroll System,'' NSF–22.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this systems may be disclosed to:

Information from this system is incorporated into the ''NSF Payroll System'' described in NSF–22. The routine uses listed in that system are also applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically.

RETRIEVABILITY:

Filed by NSF employee identification number during current pay year and alphabetically by last name, thereafter.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours. A password is needed to access the computer system.

RETENTION AND DISPOSAL:

Employee information is deleted at the end of the year in which employee leaves the Foundation. Cumulative information is kept on master tapes and maintained in NSF and at off-site location and destroyed after five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURES:

The Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCES CATEGORIES:

Information input by employee, verified by timekeeper and approved by supervisor in individual offices.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–38

SYSTEM NAME:

Visa Applications and Alien Application for Consideration of Waiver of Two-Year Foreign Residence Requirements—NSF.

SYSTEM LOCATION:

National Science Foundation, Division of International Programs, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens subject to conditions of section 212(e) of the Immigration and Nationality Act, seeking waiver of two-year foreign residence requirements, in order to apply for immigrant or temporary worker status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae, next of kin, correspondence and employment data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 212(e) of the Immigration and Nationality Act.

PURPOSES:

To determine whether NSF supports the waiver request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be released to:

1. The U.S. Information Agency, the agency responsible for issuing the visas.
2. The institution or organization requesting the waiver.
3. Contractors, grantees, volunteers and other individuals who perform a service to or perform on or under a contract, grant, cooperative agreement, or other arrangement for the Federal government, as necessary to carry out their duties.
4. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.
5. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.
6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.
7. NSF analysis and recommendation is released to the organization/institution requesting the waiver.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by last name of alien.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when guard is not on duty. Records are in locked rooms after business hours. Access is limited to persons whose official duties require their use.

RETENTION AND DISPOSAL:

Records are held at NSF approximately two years after close out of case.

Records are destroyed 10 years after close of alien case folder.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of International Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

The individual and U.S. host institution (employer).

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–49

SYSTEM NAME:

Frequent Traveler Profile.

SYSTEM LOCATION:

National Science Foundation, Professional Travel Corporation (NSF contractor) Room 275, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Science Foundation frequent travelers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Home telephone numbers, credit card information, special accommodation requirements, passport numbers and issue dates, and travel preference information, including frequent flyer numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1870; 44 U.S.C. 3101.

PURPOSE(S):

To assist travelers in their travel arrangements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Airlines for contacting traveler after hours or on weekends when there are schedule changes.

2. Airlines and hotels for meeting special requirements (wheelchair, etc.)

3. Credit card information will be given to hotels to guarantee room reservations, when approved by traveler.

4. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

5. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

6. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

7. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records are maintained in contractor file folders. Also maintained on computer files.

RETRIEVABILITY:

Records are filed alphabetically by last name.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when the guard is not on duty. Rooms in which records are kept are locked during non-business hours.

RETENTION AND DISPOSAL:

Profiles are destroyed when employees retire or leave the Foundation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Administrative Services, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contracted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information is received from individuals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–53

SYSTEM NAME:

Public Transportation Subsidy Program.

SYSTEM LOCATION:

National Science Foundation, Office of Information and Resource Management, Division of Administrative Services, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Science Foundation full-time permanent employees, grades GS–10 and below, who participate in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, social security numbers, grade level, issue dates and METRO vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1870: 44 U.S.C. 3101.

PURPOSE(S):

To assist in administration of the public transportation subsidy program. Serves as record of who received subsidy.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Other Federal agencies for use in evaluating the overall effectiveness of public transportation programs.

2. Another Federal agency, a court, or a party in litigation before a court or in

an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

3. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

4. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

5. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records are maintained in file folders and in a computer system at NSF.

RETRIEVABILITY:

Records are retrieved alphabetically by last name or by Social Security Number.

SAFEGUARDS:

NSF employs security guards. Building is locked during non-business hours when the guard is not on duty. Rooms in which records are kept are locked during non-business hours. Passwords are needed to access information in computer system.

RETENTION AND DISPOSAL:

Profiles used to determine eligibility will be deleted from the system when employee retires, leaves the Foundation, or is no longer eligible for the program. Records of distribution are kept for six years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Administrative Services, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information is gathered from the individual and from the NSF Personnel Data Base System.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–57

SYSTEM NAME:

NSF Delinquent Debtors' File.

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, Financial Statements Section, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, panelists, recipients of fellowship stipends and others owing money to the National Science Foundation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on individual debtor. Normally, the name, Social Security Number, address, amount of debt or delinquent amount, basis of the debt, office referring debts, agency collection efforts, credit reports, debt collection letters, correspondence to or from the debtor relating to the debt and correspondence with employing agencies of debtors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, Public Law 89–508; Debt Collection Act of 1982, Public Law 97–365, and E.O. 9397.

PURPOSE(S):

Information is used for the purpose of collecting moneys owed NSF arising out of any administrative or program activities or service administered by NSF. The file represents the basis for the debt and amount of debt and actions taken by NSF to collect the moneys owed under the debt. The credit report or financial statement provides an understanding of the individual's financial condition with respect to requests for deferments of payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. The U.S. General Accounting Office (GAO), Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

2. A commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

3. A debt collection agency for the purpose of collection services to recover indebtedness owed to NSF.

4. Debtor's name, Social Security Number, the amount of debt owed, and the history of the debt may be disclosed to any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on NSF's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

5. Any other federal agency including but limited to, the Internal Revenue Service (IRS) pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor of a delinquent debt owed to NSF by the debtor.

6. The Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NSF against the taxpayer pursuant to 26 U.S.C. 6103 (m)(20) and in accordance with 31 U.S.C. 3711, 3217 and 3718.

Note: Redisclosures of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other NSF purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

7. Data base information consisting of debtor's name, Social Security Number, and amount owed may be disclosed to the Defense Manpower Data Center

(DMDC). Department of Defense, the U.S. Postal Service or to any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed NSF by the debtor arising out of any administrative or program activities or services administered by NSF.

8. Any creditor Federal agency seeking assistance in implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States government from an individual. An exception to this routine use is an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2).

9. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

10. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

11. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

12. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically. Records are also maintained in file folders.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Records are kept in limited access during duty hours and in locked cabinets at all other times.

RETENTION AND DISPOSAL:

Records are disposed of after ten years unless needed for an ongoing investigation in which case the record will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The Privacy Act Officer should be contacted in accordance with procedures fount at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information in this system of records obtained from the individual, institution, award records, collection agencies, and other appropriate agencies, i.e., DMDC, IRS, GAO, USPS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NSF–65

SYSTEM NAME:

NSF Vendor File

SYSTEM LOCATION:

National Science Foundation, Division of Financial Management, 4201 Wilson Boulevard, Arlington, VA 22230

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, other individuals and vendors who will receive electronic payment from the National Science Foundation for goods or services.

CATEGORIES OF RECORD IN THE SYSTEM:

Name, address, Social Security Number, and the banking information of the payee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Debt Collection Improvement Act of 1996 provides authority for the National Science Foundation to implement mandatory electronic payments for all obligations.

PURPOSE(S):

This system enables NSF to comply with the electronic payment provision of the Debt Collection Act of 1996.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system records may be released to:

1. The Department of Treasury for the purpose of issuing the payment directly to the financial account of the payee.

2. Financial organizations for the purpose of direct deposit.

3. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

4. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

5. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

6. Representatives of the General Services Administration and the National Archives and Records administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained electronically.

RETRIEVABILITY:

These records are retrieved by name, Social Security Number or employee identification number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. A password is

required for access to the computer system. Printed reports of the data have restricted access and are treated as confidential information.

RETENTION AND DISPOSAL:

Updated information automatically replaces the old information. File is accumulative and maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' procedures above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' procedures above.

RECORD SOURCE CATEGORIES:

Information in this system of records obtained from the individual or payees.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–67

SYSTEM NAME:

Invention, patent and licensing documents.

SYSTEM LOCATION:

Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Science Foundation or its grantees or contractors who made inventions while employed by the Foundation or while performing NSF–assisted research.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains invention disclosures, patents and patent applications, and licenses submitted to NSF by its employees, grantees, and contractors, including inventor(s) name(s), identification of grantee or contractor, title and description of the invention, inventor(s) address(es) (if rights were waived to the inventor(s), associated patent prosecution and licensing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

45 CFR part 650 Patents. Executive Order No. 9865, as amended, 35 U.S.C. 266 note, ''Patent protection abroad of inventions resulting from research financed by the Government,'' describing the Government-wide policy for obtaining foreign patent protection for inventions resulting from research conducted or financed by the Government; and Executive Order No. 10096, as amended, 35 U.S.C. 266 note, ''Uniform Government Patent Policy for Inventions by Government Employees,'' describing Government-wide policy pertaining to inventions made by Government employees.

PURPOSE(S):

Records in this system are used to administer governmental rights to inventions made by NSF employees or during FSF-assisted research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Information from this system may be disclosed to:.

1. The Department of Justice and the Office of Management and Budget for consultation in processing Freedom of Information or Privacy Act requests.

2. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

3. Federal Government contractors, grantees, consultants, volunteers, or other personal who have been engaged to assist the Government in the performance of a contract, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity.

4. Appropriate Federal, State, local or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

5. For the purpose of obtaining patent protection for NSF-owned inventions and granting licenses for these patents, to: (a) Scientific personnel, both in NSF and other Government agencies and in non-Governmental organizations such as universities, who possess the expertise to understand the invention and evaluate its importance as a scientific advance; (b) contract patent counsel and their employees and foreign contract personnel retained by the Foundation for patent searching and prosecution in both the United States and foreign patent offices; (c) all other Government agencies whom NSF contacts regarding the possible use, interest in, or ownership rights in NSF inventions; (d) prospective licensees or technology finders who may further make the invention available to the public through sale or use; (e) parties, such as supervisors of inventors, whom NSF contacts to determine ownership rights, and those parties contacting NSF to determine the Government's ownership; and (f) the United States and foreign patent offices involved in the filing of NSF patent applications.

6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in file folders, computer tapes, and computer discs.

RETRIEVABILITY:

Records are retrieved by name of the inventor, invention-disclosure number, NSF program, and institution.

SAFEGUARDS:

Data on computer files is accessed by password known only to authorized users, who are NSF or contractor employees involved in patenting and licensing of NSF-owned inventions or administering rights to inventions made with NSF assistance to which grantees, contractors, or inventors have retained principal rights. Access to information is thus limited to those with a need to know. Records are stored in a locked room or in locking file cabinets in file folders. During normal business hours, Office of General Counsel personnel regulate availability of the files. During evening and weekend the offices are locked and the building is closed.

RETENTION AND DISPOSAL:

Records will be retained and disposed of under the authority of Foundation procedures currently under development.

SYSTEM MANAGER(S) AND ADDRESS:

Patent Assistant, Office of General Counsel, National Science Foundation,

4201 Wilson Boulevard, Arlington, VA 22230

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Inventors and other collaborating persons, grantees, contractors; other Federal agencies; scientific experts from non-Government organizations; contract patent counsel and their employees and foreign contract personnel; United States and foreign patent offices; prospective licenses; and third parties whom NSF contacts to determine individual invention ownership or Government ownership.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–29267 Filed 11–4–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00005; License No. Colorado 580–1; EA 96–459]

Western Colorado Testing, Inc., Grand Junction, CO; Order Imposing Civil Monetary Penalty

I

Western Colorado Testing, Inc., (WCTI or Licensee) is the holder of a General License pursuant to the provisions of 10 CFR 150.20(a). This authorizes any person who holds a specific license from an Agreement State to conduct the same activity in non-Agreement States subject to the provisions of 150.20(b). WCTI holds a specific license from the state of Colorado, an Agreement State, License No. 580–1.

II

An inspection of the Licensee's activities was conducted from October 11, 1996, through February 3, 1997, and an investigation was conducted from August 14, 1996, through January 8, 1997. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 13, 1997. The notice states the nature of the violation, the provisions of NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated July 16, 1997. In its response, the Licensee stated that facts of the case warrant a reconsideration of both the characterization of the violation (as willful) and the proposed civil penalty.

III

After consideration of the Licensee's response and the arguments for mitigation or reconsideration of the civil penalty contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered That:

The Licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 28th day of October 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On June 13, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violation identified during an NRC inspection and investigation. Western Colorado Testing, Inc., (WCTI or Licensee) responded to the Notice in a letter dated July 16, 1997. In its response, the Licensee stated that facts of the case warrant a reconsideration of both the characterization of the violation (as willful) and the proposed civil penalty. However, the Licensee did not dispute the violation in its response and, in its April 1, 1997 letter responding to the inspection report, admitted the violation. The NRC's evaluation of the Licensee's request and conclusion regarding the Licensee's requests are as follows:

Summary of Licensee's Request for Mitigation

WCTI stated that, although management was aware of the requirement to inform the NRC prior to working in areas under NRC jurisdiction, this fact alone does not justify designation of the violation as willful, and the corresponding penalty of $2,500. In support of its position, the Licensee stated that the Radiation Safety Officer (RSO), who was ''not as honest and forthright'' as WCTI's president, had represented to WCTI's president that he filed the required Form 241; and that WCTI's president made every effort to ensure compliance with NRC requirements. WCTI also noted that its compliance efforts are reflected by the fact that there has never been any previous escalated enforcement action against it. WCTI pointed out that, according to the NRC's Enforcement Policy, previous escalated enforcement is a factor that is considered in assessing a civil penalty, and that this factor was not considered in the proposed assessment of the civil penalty.

WCTI noted that, in cases where the NRC concludes that no willful violation has occurred, and no escalated enforcement action has been taken within the two prior years or during the two prior inspections,

generally no penalty assessment is even proposed. WCTI maintained that its situation was distinguishable from that of other testing companies that had been ''fined'' by the NRC for willful violations of the same regulations. In this regard, WCTI claimed that it should not be classified together with those testing firms in which the principals were deliberately ignoring compliance requirements.

Finally, the Licensee argued that, upon being notified that Form 241 had not been filed, WCTI took prompt corrective action to ensure compliance and effective comprehensive action to prevent recurrence of the violation.

NRC Evaluation of Licensee's Request for Mitigation

Section VI.A. of the Enforcement Policy provides that, in general, licensees are held responsible for the acts of their employees. The Commission formally considered the responsibility issue between a licensee and its employees in its decision concerning the Atlantic Research Corporation case, CLI–80–7, dated March 14, 1980. In that case, the Commission stated, in part, that ''a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field.''

Not holding the licensee responsible for the actions of its employees, whether such actions result from negligence or willful misconduct, is tantamount to not holding the licensee responsible for the use or possession of licensed material. If the NRC adopted this position, there would be less incentive for licensees to monitor their own activities to assure compliance because licensees could attribute noncompliance to employee negligence or misconduct. Therefore, notwithstanding WCTI's argument that the blame for the violation rests with the former company RSO, under long-established Commission Policy and case law, the company is still responsible for the actions of its former RSO. Further, the NRC notes that the violation continued to exist in 1996, after the assignment of a newly trained RSO. This detracts from the Licensee's argument that the blame lay with one particular former RSO.

As WCTI noted, Section VI.B.2 of the NRC's Enforcement Policy provides for consideration of previous escalated enforcement in the civil penalty assessment process. However, the civil penalty assessment process considers several factors, including whether the violation is willful. If any one of these considerations applies, the policy states that the NRC should normally consider identification in addition to corrective action in the civil penalty assessment process (regardless of the licensee's previous escalated enforcement). In this case, the NRC considered both identification and corrective action in determining the civil penalty because the NRC concluded that the violation was willful.

The term ''willfulness,'' as defined by Section IV.C. of the NRC Enforcement Policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify, to and *including careless disregard for requirements* (emphasis added). In this case, as described in the NRC's Notice, the NRC concluded that WCTI (not its president), through the action of one or more of its representatives, committed a violation with careless disregard for NRC regulations, a condition that clearly meets the NRC's definition of a willful violation. As described in the Notice, the NRC's conclusion was based on several grounds, including the fact that WCTI had knowledge of the requirement to file NRC Form 241 (which WCTI admits in its response).

As to Licensee's discussion of the NRC Enforcement Policy, civil penalties are not normally proposed in cases where the NRC concludes that no willful violation has occurred and no escalated enforcement action has been taken within the two prior years or two prior inspections, provided that prompt and comprehensive corrective action is taken. However, the policy provides for consideration of civil penalties in cases involving willfulness.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation and enforcement sanction are best suited to the significance of the particular violation. In this case, as noted above, the NRC concluded that the violation was willful. Therefore, in accordance with Section VI.B of the Enforcement Policy, the NRC concluded that: (1) No credit was warranted for identification because the NRC identified the violation; and (2) credit was warranted for WCTI's prompt and comprehensive corrective action (had the NRC concluded otherwise, a civil penalty of $5,000 would have been proposed).

In its response, WCTI claimed that its case was ''readily distinguishable'' from other similar enforcement actions such as EA 95–270, ''Foley Construction Services,'' EA 95–101, ''Testco, Inc.,'' and EA 93–241, ''S.K. McBryde, Inc.'' The NRC agrees that WCTI's case is distinguishable from the cases cited by WCTI in that the cases cited involved deliberate violations, not violations involving careless disregard. However, WCTI's comparison of the civil penalty in this case to that in the cases cited in flawed in that: (1) The civil penalty in the Foley Construction Services case was based on the civil penalty assessment process described in an earlier Enforcement Policy;[1] (2) the enforcement action taken against Testco, Inc., involved an Order Prohibiting Involvement in NRC-Licensed Activities to President of the company, as well as a civil penalty to the licensee, which was initially based on enforcement discretion and subsequently reduced from $5,000 to $1,000; and (3) the S. K. McBryde case did not involve an NRC Form-241 violation, it involved a Severity Level IV violation for failure to maintain complete and accurate records and a civil penalty that was based on the civil penalty assessment process described in the earlier Enforcement Policy.[1] Furthermore, the enforcement action against WCTI is consistent with other recent cases involving careless disregard by testing companies to submit Form-241 where corrective action credit was warranted. For example, penalties of $2,500 were assessed in enforcement actions involving EA 96–382, ''Energy Technologies, Inc.,'' EA 96–382, ''Grandin Testing Lab, Inc.,'' and EA 96–447, ''Testing Laboratories, Inc.''[2]

NRC Conclusion

The NRC concludes that the violation occurred as stated and that the Licensee has not provided adequate justification for reconsideration of the characterization of the violation as ''willful'' or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 97–29242 Filed 11–4–97; 8:45 am]

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[1] In this earlier Enforcement Policy, the base amount for a Severity Level III was $500 and the civil penalty assessment process involved consideration of 6 factors. Under the current Enforcement Policy, the base amount for a Severity Level III is $2,500 and the civil penalty assessment process involves consideration of 2 factors.

[2] These cases are available on the NRC web site at ''http://www.nrc.gov/oe/'', which is maintained by the Office of Enforcement.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 AND 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Power Plant (DCPP), Units 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt Pacific Gas and Electric Company from the requirements of 10 CFR 70.24, which requires in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the

sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated April 3, 1997, as supplemented by letter dated August 4, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the Diablo Canyon Power Plant, Units 1 and 2 Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures.

The proposed exemption would not result in an increase in the probability or consequences of accidents, affect radiological plant effluents, or cause any significant occupational exposures. Therefore, there are no radiological impacts associated with the proposed exemption.

The proposed exemption does not result in a change in non-radiological effluents and will have no other non-radiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Diablo Canyon Power Plant dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on October 6, 1997, the staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the State Department of Health Services, 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 action.

For further details with respect to the proposed action, see the licensee's letter dated April 3, 1997, and supplemental letter dated August 3, 1997, which are available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC., and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 30th day of October 1997.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29245 Filed 11–4–97; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company; Centerior Service Company and The Cleveland Electric Illuminating Company; Davis-Besse Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–3, issued to Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensees from the requirements of 10 CFR 70.24, which requires in each area in which special nuclear material is handled, used, or stored a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensees from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensees' application for exemption dated January 30, 1997, as supplemented May 28 and October 3, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate

action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235, and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. Therefore, the requirements of 10 CFR 70.24 are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the Davis-Besse Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures.

The proposed exemption would not result in an increase in the probability or consequences of accidents, affect radiological plant effluents, or cause any significant occupational exposures. Therefore, there are no radiological impacts associated with the proposed exemption.

The proposed exemption does not result in a change in nonradiological effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Davis-Besse dated October 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on July 30, 1997, the staff consulted with the Ohio State official, Carol O'Claire, of the Ohio Emergency Management Agency, 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 action.

For further details with respect to the proposed action, see the licensees' letters dated January 30, May 28, and October 3, 1997, which are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 30th day of October 1997.

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. 97–29243 Filed 11–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 96th meeting on November 20–22, 1997, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Thursday, November 20, 1997—8:30 a.m. until 6 p.m.

Friday, November 21, 1997—8:30 a.m. until 6 p.m.

Saturday, November 22, 1997—8:30 a.m. until 4 p.m.

A. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss developments at the Yucca Mountain project, resources, rules under development, and other items of mutual interest.

B. *Waste Classification at West Valley, Hanford and Savannah River*—The NRC staff will brief the Committee on its evaluation of the DOE methodology for classification of waste resulting from treatment, bulk high-level waste removal and cleaning of tanks. Background and history will be discussed along with current status, review schedules and criteria for the classification of wastes as incidental.

C. *Standard Review Plan on Dry Cask Storage Facility*—The Committee will review and provide comments on this Standard Review Plan.

D. *HLW Issue Resolution Status Reports and Acceptance Criteria*—The NRC staff will update the Committee on the progress of staff reviews related to the high-level waste key technical issues. (Tentative)

E. *NRC's Division of Waste Management Priorities*—The Committee will review the Division of Waste Management's priorities and planned interactions with the ACNW for the coming year.

F. *Prepare for Next Meeting with the Commission*—The Committee will prepare for its next formal meeting with the Commission. The Committee is scheduled to discuss items of mutual interest with the Commission on December 17, 1997.

G. *Preparation of ACNW Reports*—The Committee will discuss planned reports, including comments on the Standard Review Plan for Spent Fuel Dry Storage Facilities, comments on NRC Waste Related Research, ACNW Priorities, and other topics discussed during the meeting as the need arises.

H. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete

discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: October 30, 1997.

John C. Hoyle,

Acting, Advisory Committee Management Officer.

[FR Doc. 97–29241 Filed 11–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–7001; 70–7002]

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy on Cooperation Regarding the Gaseous Diffusion Plants

AGENCIES: Nuclear Regulatory Commission and Department of Energy.

ACTION: Memorandum of Understanding between the Nuclear Regulatory Commission and the Department of Energy.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) have entered into a Memorandum of Understanding (MOU) on cooperation regarding the gaseous diffusion plants. The MOU is intended to describe the various responsibilities with respect to continued cooperation between NRC and DOE, and to set forth a framework for coordination of issues now that NRC has assumed regulatory oversight. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Pierson, telephone 301–415–7192, Office of Nuclear Material Safety and Safeguards, MS T–8A–33, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of October 1997.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Director, Division of Fuel Cycle Safety, and Safeguards, NMSS.

Memorandum of Understanding Between the Department of Energy and the Nuclear Regulatory Commission; Cooperation Regarding the Gaseous Diffusion Plants

I. Background

The Atomic Energy Act of 1954 (the Act), as amended by the Energy Policy Act of 1992 (42 U.S.C. 2297 *et seq.*), created the United States Enrichment Corporation (USEC), a government corporation, for the purpose of managing and operating the uranium enrichment enterprise owned and previously operated by the Department of Energy (DOE). USEC leased those portions of the plants related to gaseous diffusion plant (GDP) operations from DOE. Certain portions of the plants, such as waste storage areas and burial grounds, are not leased by USEC and remain under DOE's jurisdiction. The Act also required that the Nuclear Regulatory Commission (NRC) establish standards for regulation of the GDPs located in Paducah, Kentucky, and Piketon, Ohio, in order to protect the worker and public health and safety and to provide for the common defense and security. NRC published its final standards, 10 CFR part 76, ''Certification of Gaseous Diffusion Plants,'' on September 23, 1994 (59 FR 48944). The Act also directed NRC to establish and implement an annual [1] certification process by which the gaseous diffusion plants would be certified by NRC for compliance with these standards. For areas where plant operations are not yet in compliance, the Act provided that DOE will prepare compliance plans. Based upon a review of the certification applications and the DOE-prepared compliance plans submitted by USEC, on September 16, 1996, a Notice of Certification Decision for the USEC to operate the GDPs and a Finding of No Significant Impact (the notice) was issued by NRC, 61 FR 49360 (September 19, 1996). After disposition of public comments received in response to NRC's Notice of Certification Decision, NRC issued a Certificate of Compliance and a compliance plan approval for each plant on November 26, 1996. The Certificates of Compliance became effective and NRC assumed regulatory oversight of the GDPs on March 3, 1997.

This Memorandum of Understanding (MOU) is designed to supplement the ''Agreement Defining Security Responsibilities at the Paducah and Portsmouth Gaseous Diffusion Plants Between the Department of Energy's Office of Safeguards and Security and the Nuclear Regulatory Commission's Division of Security,'' dated March 10, 1995, and replace the ''Agreement Establishing Guidance for NRC Inspection Activities at the Paducah and Portsmouth Gaseous Diffusion Plants between Department of Energy Regulatory Oversight Manager and Nuclear Regulatory Commission,'' dated August 11, 1994.

II. Authority and Scope

Pursuant to the Atomic Energy Act of 1954, as amended, including in particular the provisions of the Energy Policy Act of 1992 on regulation and certification as generally described above, NRC and DOE are issuing this MOU to describe the various responsibilities with respect to continued cooperation between NRC and DOE, and to set forth a framework for coordination of issues now that NRC has assumed regulatory oversight.

A. NRC assumed regulatory oversight for nuclear safety, safeguards, and security at the leased portions of the GDPs on March 3, 1997, with the exception of the Highly Enriched Uranium (HEU) Refeed activity in Buildings X–326 and X–705 at the Portsmouth Gaseous Diffusion Plant.

B. The Regulatory Oversight Agreement (ROA), Exhibit D to the Lease Agreement between DOE and USEC, sets forth the requirements and safety basis for the operation of DOE activities in the leased areas of the GDPs. The activities governed by the ROA consist of HEU Refeed activity in Buildings X–326 and X–705 at the Portsmouth Gaseous Diffusion Plant. Nothing

[1] The USEC Privatization Act, Pub. L. 104–134, amends 1701(c)(2) of the Atomic Energy Act, by replacing the requirement for an annual application for a certificate of compliance with a requirement for an application to be filed ''periodically, as determined by the Commission, but not less than every five years.''

in this MOU is intended to restrict or expand the authority of DOE or to affect or otherwise alter the terms of the ROA until by its terms it ceases to apply to facilities or activities for which NRC assumes regulatory oversight.

C. NRC certification of the GDPs is in part conditioned upon USEC adherence to a Compliance Plan prepared and approved by DOE for each GDP in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Part 76. Modification(s) to the Compliance Plan requires DOE approval prior to submittal to NRC for final approval.

D. NRC re-certification of the GDPs is in part conditioned upon USEC compliance with all terms and conditions of the NRC certificate of compliance.

E. Nothing in this MOU is intended to restrict or otherwise limit the authority of NRC to exercise its full regulatory authority, including both inspection and enforcement authority.

III. Interfaces Between DOE and NRC

A. Exchange of Information and Technical Staff Support

1. DOE and NRC agree to make available to each other information and technical support concerning matters of common interest.[2] DOE and NRC agree to meet, as necessary, at mutually agreeable times and locations to exchange information on matters of common interest.

2. DOE agrees to notify NRC of the following:

a. Substantial proposed changes to the GDP site involving matters of common interest.

b. Substantial proposed changes to the Lease Agreement between the Department of Energy and the United States Enrichment Corporation, dated July 1, 1993.

c. Substantial proposed changes to the DOE Regulatory Oversight Agreement between DOE and USEC.

d. Substantial proposed changes to ''USEC AND DOE Resolution of Shared Site Issues at the Gaseous Diffusion Plants,'' dated January 24, 1996.

e. Substantial proposed changes to the HEU Refeed Program.

3. NRC agrees to notify DOE of the following:

a. Substantial proposed changes in USEC's operations potentially impacting safety, safeguards and/or security on site.

b. Substantial changes to the conditions or terms of the NRC certificate of compliance issued to USEC.

c. Substantial changes to USEC's compliance with the conditions or terms of the certificate of compliance issued to USEC.

4. NRC will consult with DOE on health, safety and environmental issues at the GDPs when preparing the required annual report to Congress on the GDPs.

5. NRC and DOE will share all audit, assessment, and inspection reports on shared systems or areas.

6. DOE and NRC will coordinate with each other for proposed enforcement actions involving those shared systems or areas in Buildings X–326 and X–705 at the Portsmouth GDP where there is HEU activity. USEC is responsible for all system components required for USEC LEU/GDP operability. These components are subject to NRC inspection and enforcement, although they may be physically located in DOE controlled space.

7. Each agency recognizes that it is responsible for the identification, protection, control and accounting of information used or otherwise furnished in connection with this MOU in accordance with its established procedures. This information consists of classified, proprietary, Safeguards Information (SGI) and Unclassified Controlled Nuclear Information (UCNI).

B. Emergency Response

1. In accordance with the Federal Radiological Emergency Response Plan (FRERP), the NRC is the Lead Federal Agency (LFA) for an emergency involving DOE-owned GDPs operating under NRC regulatory oversight. If the origin of the emergency is determined to be in the DOE portion of the plant, then the LFA would be transferred to DOE. DOE and NRC will develop appropriate joint procedures which will ensure compatibility in response to emergencies in leased areas under NRC regulatory oversight.

2. The emergency planning requirements for GDPs, including offsite notifications and emergency classification levels and their corresponding emergency action levels, will be in accordance with the site emergency plans and procedures which will be coordinated among shared site regulators and tenants before and during implementation.

C. Referrals

1. DOE will not conduct inspections of nuclear safety, safeguards, and security in leased areas, except where there is shared safety, safeguards, or security features in USEC leased space, or as related to the HEU Refeed Program and DOE nuclear material and activities in USEC leased space. However, DOE personnel may, during the course of performing DOE activities, identify nuclear safety, safeguards or security concerns within the area of NRC responsibility. In such instances these and any other nuclear safety, safeguards or security concerns within NRC's purview identified by DOE will be referred to the NRC Resident Inspector for appropriate action. If DOE identifies situations with immediate safety, safeguards, or security significance, it will immediately communicate this information to USEC and the NRC Resident Inspector.

2. Similarly, although NRC will not conduct nuclear safety, safeguards, and security inspections in non-leased areas, NRC personnel may, during the course of performing NRC activities, identify nuclear safety, safeguards or security concerns within the area of DOE responsibility. NRC will refer these concerns to the DOE Site Manager for appropriate disposition. If the NRC identifies situations with immediate safety, safeguards, or security significance, it will immediately communicate this information to USEC and the DOE Site Manager.

3. Each agency will be responsible for processing, under its established program(s), allegations—declarations, statements or assertions of impropriety or inadequacy whose validity has not been established—and employee complaints or concerns of regulatory significance. Each agency will keep the other agency informed, as appropriate, of the existence, status and resolution of such allegations, complaints, or concerns. Each agency will assure that each allegation, complaint, or concern is promptly referred to the agency or entity that has jurisdiction over the allegation, complaint, or concern.

D. Coordinations

1. DOE will coordinate with USEC to inform NRC of reportable events, under DOE's occurrence reporting system, for which DOE is responsible.

2. DOE and NRC shall consult with each other before disclosure of information related to this MOU to preclude dissemination of information which may be exempt from disclosure under the Freedom of Information Act. It is NRC's practice to place all docket related DOE correspondence that is not classified or proprietary in the Public Document Room, unless DOE specifically requests, with appropriate justification, that the information be withheld.

3. On occasion, DOE may need to move its nuclear materials not in process through USEC areas to another location. NRC will not require DOE to fill out Forms 741 and/or 742 if the nuclear materials not in process only pass through USEC areas, i.e., not normally involving more than one shift, and remaining under DOE's continuous custody.

IV. Points of Contact

A. The principal senior management contacts for this MOU will be the DOE Assistant Manager for Enrichment Facilities, Oak Ridge Operations Office, and the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, NRC. These individuals may designate appropriate staff representatives for the purpose of administering this MOU.

B. Identification of these contacts is not intended to restrict communication between DOE and NRC staff members on technical and other day-to-day activities.

V. Resolution of Disputes

A. If disagreements or conflicts about matters within the scope of this MOU arise, DOE and NRC will work together to resolve these differences.

B. Resolution of differences between DOE and NRC staff will be the initial responsibility of the DOE Site Manager, Portsmouth Site Office, or the DOE Site Manager, Paducah Site Office, and the Chief of the responsible Branch within the Office of Nuclear Material Safety and Safeguards, NRC.

C. If the issue can not be resolved at the staff level, the NRC and DOE agree to refer the matter within 30 days to the Assistant

[2] Matters of common interest concern modifications to GDP site areas, railways, roadways, structures, systems, components, hazards, activities, tenant mix, population, etc., which can impact safety, safeguards or security risks (likelihood or consequence) under DOE or NRC jurisdiction during normal, off-normal or emergency conditions. The tenant mix includes multiple organizations other than DOE and USEC with GDP site space leased from DOE. These organizations are not staffed with GDP workers, i.e. National Guard, Defense Logistic Agency, etc.

Manager for Enrichment Facilities, Oak Ridge Operations Office, DOE, and the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, NRC.

VI. Effective Date and Modification

This MOU shall become effective upon signing by the DOE Assistant Manager for Enrichment Facilities, Oak Ridge Operations, and the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, NRC, and will be subject to periodic reviews and may be amended or modified upon written agreement by the parties. This MOU may be terminated by mutual agreement or by written notice of either party submitted six months in advance of termination.

VII. Separability

If any provision(s) of this MOU, or the application of any provision(s) to any person or circumstances, is held invalid, the remainder of this MOU and the application of such provision(s) to other persons or circumstances shall not be affected.

For the Nuclear Regulatory Commission.

Dated: October 27, 1997.

Elizabeth Q. Ten Eyck,

Director Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.

For the Department of Energy.

Dated: October 28, 1997.

Joseph W. Parks,

Assistant Manager for Enrichment Facilities, Oak Ridge Operations Office, Department of Energy.

[FR Doc. 97–29244 Filed 11–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 10, 1997, through October 24, 1997. The last biweekly notice was published on October 22, 1997 (62 FR 54866).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 5, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, MD

Date of amendment request: October 2, 1997.

Description of amendment request: The amendment request would change the Technical Specifications to identify a proposed upgrade of the electrical capacity of the No. 1B emergency diesel generator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Engineered Safety Features (ESF) electrical system provides a reliable source of electrical power to the 4.16 kV ESF busses to operate the necessary accident mitigation equipment, should offsite power be lost. The proposed change to the Technical Specifications was prompted by the upgrade of the electrical and mechanical capacity of the No. 1B Fairbanks Morse Emergency Diesel Generator (EDG). The increased electrical capacity of the No. 1B Fairbanks Morse EDG will give the operators greater flexibility in the choice of discretionary loads for the mitigation of accidents. This modification necessitates changes to the Technical Specifications.

The ESF electrical system, including the four EDGs, is used to mitigate the consequences of an accident. The modification to upgrade the capacity of No. 1B EDG will increase the electrical output of the EDG, but will not change the configuration of the ESF electrical system or any support systems such that the EDGs would become an accident initiator. Therefore, the proposed change would not increase the probability of an accident previously evaluated.

The proposed Technical Specifications will continue to demonstrate the reliability and capability of the upgraded No. 1B EDG to perform its accident mitigation function. The proposed changes to the surveillance requirements do not alter the intent or performance of the surveillance. Only the electrical loadings changed, reflecting the change in the EDG's electrical capacity. Implementation of the proposed Technical Specifications will not reduce the ability of No. 1B EDG to perform its safety functions. Any auxiliary systems that required modification or analysis to support the upgraded ratings of the 1B Fairbanks Morse EDG have been determined not to adversely impact operation of any other plant systems necessary to mitigate the consequences of an accident. Therefore, the proposed change would not increase the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change increases the electrical loading for surveillance requirements to reflect the upgrade to the electrical capacity of the No. 1B Fairbanks Morse EDG. This change does not add any new equipment, modify any interfaces with any existing equipment, change the equipment's function, or the method of operating the equipment to be modified. The system will continue to operate in the same manner as before the capacity upgrades were implemented. The modified No. 1B EDG will continue to function as an accident

mitigator, and will not become an initiator of any accident.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the EDG is to provide a reliable source of electrical power to the ESF electrical system sufficient to power the necessary accident mitigation equipment, should offsite power be lost. This safety function is demonstrated by performing the required surveillance tests. The proposed changes do not alter the intent or method of performance of any of the surveillance tests.

The proposed change to the Technical Specifications was prompted by the upgrade of the electrical and mechanical capacity of the No. 1B Fairbanks Morse EDG. The higher electrical capacity will result in an increase in the margin between No. 1B EDG's electrical capacities and the electrical power required to operate safety-related equipment required for safe shutdown or accident mitigation. The increased electrical capacity results in the need to increase the electrical loadings used in the surveillance tests. The changes in the surveillance tests will continue to ensure that the EDG is tested appropriately and will continue to perform its safety function. In addition, it should be noted that upgrades on identical Fairbanks Morse EDGs have already been performed on Unit 2 and have resulted in identical changes to the Unit 2 Technical Specifications. Because of the increased electrical margin afforded by the upgraded EDG, these modifications may be considered an increase in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, MD 20678.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Director.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, IL; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, IL

Date of amendment request: September 8, 1997.

Description of amendment request: The proposed amendment would revise Byron and Braidwood Technical Specification (TS) 4.5.2.b and associated bases as they relate to the requirement to vent the Emergency Core Cooling System (ECCS) pump casings and discharge piping high points outside containment. The change will revise the Unit 1 requirement for ultrasonic examinations every 31 days to also include ultrasonic examination of the piping at the 1CV206 valve for Byron (1CV207 valve for Braidwood) if the 1B Chemical and Volume Control (CV) pump is idle. These changes are required to align the surveillance requirements for Unit 1 with those of Unit 2. In addition, the condition that the Unit 1 requirements will be applicable only until the end of the current cycle is deleted consistent with the Unit 2 requirements. With these changes there will no longer be the need to maintain separate pages for Unit 1 and Unit 2 requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will align the surveillance requirements for both Units 1 and 2 with the installed system design and normal operating conditions. No increase in the probability of an accident will occur as a result of this change. The conduct of surveillances required by the Technical Specifications is not postulated to initiate an accident. The level of surveillance performed to date has provided confidence that the objective of the current surveillance requirement has been met. As such, the proposed change does not result in a significant increase in the probability of occurrence of a previously analyzed accident.

The consequences of a previously analyzed accident are not increased. Operating experience has shown that the level of surveillance performed to date is sufficient to provide confidence that no significant voiding has occurred in the affected piping. Ultrasonic examinations have confirmed the water solid condition of the piping. Although voiding is not expected, evaluation of postulated voided conditions confirm that unacceptable dynamic loading would not occur, and, therefore, the integrity of the ECCS piping is not compromised. Thus, the ECCS will be capable of performing its design function of cooling the reactor core and providing shutdown capability following initiation of the certain accidents. This will ensure that the consequences of a previously analyzed accident are not significantly increased.

Therefore, these proposed revisions do not result in a significant increase in the probability or consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident. ComEd has evaluated the piping configuration for the ECCS discharge piping of the ECCS subsystems. A specific engineering evaluation of both a voided 2-inch and 8-inch RH [Residual Heat Removal] line was performed. This evaluation concluded that the piping can withstand the dynamic loads caused by the maximum credible air void. Due to the higher-pressure rating and smaller size of the SI [Safety Injection] and CV discharge piping, this evaluation is considered bounding for the ECCS subsystems. The results of the evaluation were submitted for staff review in a letter dated March 12, 1990, in support of Amendments 47 and 36 to the Operating Licenses for Byron and Braidwood, respectively. The proposed changes will not result in new failure modes because no new equipment is installed, and installed equipment is not operated in a new or different manner. Manual venting operations have been performed as permitted by system operation and piping configuration. This venting surveillance does not apply to subsystems in communication with operating systems because the flows and/or pressures prevalent in these systems are sufficient to provide confidence that water hammer which could occur from voiding would not result in unacceptable dynamic loads from water hammer will not occur. Accordingly, this change will not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not significantly reduced because the proposed change will provide sufficient assurance that excessive voiding will not occur. This will assure proper system functioning. Venting of the idle subsystems, in conjunction with the operating conditions of the subsystems in operation, provides confidence that voiding is not present. This has been confirmed by the performance of ultrasonic examinations of the piping of interest. This meets the objective of the surveillance requirement and thus preserves the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, IL 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, IL 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, IL 60603.

NRC Project Director: Robert A. Capra.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, MI

Date of amendment request: January 18, 1996, as revised October 1, 1997.

Description of amendment request: The original proposed amendment (January 18, 1996) would have deleted the requirement in Section 6.5.6 of the Technical Specifications (TS) to perform inservice inspections of the primary coolant pump (PCP) flywheels. The October 1, 1997, submittal would revise Section 6.5.6 of the TS to lengthen the flywheel inspection period to 10 years rather than delete it entirely. The note added by Amendment 175 for the deletion of the inspection at the end of Cycle 12 would also be deleted. The original submittal was previously noticed in the **Federal Register** on September 11, 1996 (61 FR 47976).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration in its original submittal. In its revised submittal the licensee stated that the conclusions reached in the original no significant hazards consideration determination were still valid because the revised submittal just reduces the frequency of the test as opposed to deleting it. The original no significant hazards consideration discussion is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change to the Technical Specifications would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Technical Specifications would delete the requirement to perform non-destructive examination of the upper flywheel on the PCPs. The fracture mechanics analyses conducted to support the change show that a preexisting crack sized just below detection level will not grow to the flaw size necessary to result in flywheel failure within the life of the plant. This analysis conservatively assumes minimum material properties, maximum flywheel accident speed, location of the flaw in the highest stress area and a number of startup/shutdown cycles eight times greater than expected. Since an existing flaw in the flywheel will not grow to the allowable flaw size under normal operating conditions or to the critical flaw size under LOCA [loss-of-coolant accident] conditions over the life of the plant, elimination of inservice inspection for such cracks during the plant's life will not involve a significant increase in the probability of an accident previously considered.

The proposed changes do not increase the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the Technical Specifications would not change the design, configuration, or method of operation of the plant and therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the Technical Specifications would not result in a significant reduction in the margin of safety. Significant conservatisms have been used for calculating the allowable flaw size, critical flaw size and crack growth rate in the PCP flywheels. These include minimum material properties, maximum flywheel accident speed, location of the postulated flaw in highest stress area and a number of startup/shutdown cycles eight times greater than expected. Since an existing flaw in the flywheel will not grow to the maximum allowable flaw size under normal operating conditions or to the critical flaw size under LOCA conditions over the life of the plant, elimination of inservice inspections for such cracks during the plant's life will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. In addition, the staff agrees that this analysis bounds the conditions in the revised submittal. The editorial change to delete an obsolete note has no effect on plant operation or safety and also satisfies the three standards of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, MI 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, MI 49201.

NRC Project Director: John N. Hannon.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, NJ

Date of amendment request: October 10, 1997.

Description of amendment request: The proposed change (TSCR 253) would reflect the registered trade name of ''GPU Nuclear'' in the operating license for the Oyster Creek Nuclear Generating Station (OCNGS) and change the legal name of the operator of OCNGS from GPU Nuclear Corporation to GPU Nuclear, Inc. In addition, two minor editorial corrections are included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment adds to the license and the technical specifications the trade name of the

Owner of Oyster Creek. The change in the legal name of the operator of Oyster Creek is an administrative change made to reflect the name changes made throughout the GPU family of companies. The name change has no impact on plant design or operation.

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because no new failure modes are created by the proposed changes. The use of a trade name for the Owner of Oyster Creek and the change in the legal name of the operator of Oyster Creek has no impact on plant design or operation. Thus, there is no creation of the possibility of a new or different kind of accident from those previously evaluated.

Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. The proposed amendment does not change any operating limits for reactor operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. In addition, the staff has reviewed the licensee's proposed editorial changes and determined that they do not effect the conclusions of the analysis. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ronald B. Eaton, Acting Director.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 1, Oswego County, NY

Date of amendment request: October 21, 1997. This notice supersedes a previous notice, (62 FR 30625), published June 4, 1997, which was based upon the licensee's application for amendment dated May 16, 1997. The licensee's application dated October 21, 1997, supersedes the May 16, 1997, submittal in its entirety.

Description of amendment request: The proposed amendment would change the administrative section of the Technical Specifications (TS) regarding the Operations organization. Specifically, TS 6.2.2i currently states that ''The Manager Operations, Station Shift Supervisor Nuclear and Assistant Station Shift Supervisor Nuclear shall hold senior reactor operator licenses.'' This would be changed to state ''As a minimum, either the Manager Operations or the General Supervisor Operations shall hold a senior reactor operator license. The Station Shift Supervisor Nuclear and Assistant Station Shift Supervisor Nuclear shall hold senior reactor operator licenses.'' In addition TS 6.3.1 would be revised to indicate an additional exception to the operating staff's qualification requirements set forth in American National Standard Institute (ANSI) N18.1–1971, ''Selection and Training of Nuclear Power Plant Personnel.'' Specifically, this change would require that the Manager Operation, in lieu of meeting the senior reactor operator (SRO) requirements of ANSI N18.1–1971, shall (1) hold an SRO license at the time of appointment, or (2) have held an SRO license at Nine Mile Point Nuclear Station Unit 1 or a similar unit, or (3) have been certified for equivalent SRO knowledge.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 1 [NMP1], in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the position of GSO and the requirement for either the GSO or the Manager Operations to have an SRO license is a restructuring of the Operations department. The proposed changes are administrative changes that provide additional Operations management oversight capabilities. Additional restrictions placed on the Manager Operations minimum qualification requirements for experience and SRO level knowledge for the resulting organization meet the intent of ANSI N18.1–1971 and SRP [Standard Review Plan, NUREG–0800] 13.1.1–13.1.3. No physical modification of the plant is involved and no changes to the methods in which plant systems are operated are required.

None of the precursors of previously evaluated accidents are affected, and no new failure modes are introduced. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of the position of GSO and the requirement for either the GSO or the Manager Operations to have an SRO license is a restructuring of the Operations department. The proposed changes are administrative changes that provide additional Operations management oversight capabilities. Additional restrictions placed on the Manager Operations minimum qualification requirements for experience and SRO level knowledge ensure the resulting organization meets the intent of ANSI N18.1–1971 and SRP 13.1.1–13.1.3. No physical modification of the plant is involved and no changes to the methods in which plant systems are operated are required. As such, the change does not introduce any new failure modes or conditions that may create a new or different accident. Therefore, this change does not itself create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The addition of the position of GSO and the requirement for either the GSO or the Manager Operations to have an SRO license is a restructuring of the Operations department. The proposed changes are administrative changes that provide additional Operations management oversight capabilities. Additional restrictions placed on the Manager Operations minimum qualification requirements for experience and SRO level knowledge ensure the resulting organization meets the intent of ANSI N18.1–1971 and SRP 13.1.1–13.1.3. No physical modification of the plant is involved and no changes to the methods in which plant systems are operated are required. As such, this change does not in itself adversely affect any physical barrier to the release of radiation to plant personnel or to the public. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, NY 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, CT

Date of amendment request: October 7, 1997.

Description of amendment request: Technical Specifications 4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3 require the testing of the containment to verify leakage limits at a specified test pressure. The proposed amendment would (1) modify the list of valves that can be opened in Modes 1 through 4, (2) remove a footnote on Type A testing, and (3) make editorial changes to the Technical Specifications and associated Bases sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change to Technical Specification Surveillance 4.6.1.1 deletes valves from the list of containment isolation valves that may be opened under administrative control. Deleting the valves, which means that they are not allowed to be opened under the Limiting Condition of Operation, [cannot] cause an accident. The valves being added in the steam lines to the steam-driven auxiliary feedwater pump can be used to heat the steam lines prior to testing the steam-driven auxiliary feed water pump. Heating the steam lines prior to testing the steam-driven auxiliary feedwater pump does not increase the likelihood of a steam line break.

The administrative change of replacing the ''-'' with an ''*'' in the valve designation can neither cause [an] accident nor affect the consequences of any accident.

The addition of the RHR [residual heat removal] system containment isolation valves reflects the fact that these valves can be opened during Mode 4 to allow plant heatup and cooldown. Plant heatup and cooldown, in accordance with normal plant operation and the Technical Specifications, does not increase the likelihood of the above accidents.

The administrative controls include the appropriate considerations that containment integrity will be established, when required. By establishing containment integrity, the assumptions in the design basis analyses are assured. This means that for LOCA [loss-of-coolant accident], steam line break and feed line break accidents inside containment, there is no effect on their consequences.

Valves in the steam lines to the steam-driven auxiliary feedwater pump are being added to the list of valves allowed to be opened under administrative control. This means that these could be open at the initiation of an accident. The administrative controls under which these valves are opened provides assurance that containment integrity will be established, when required. Similarly, for an SGTR [steam generator tube rupture], Locked Rotor or Control Rod Ejection event, the administrative controls provides assurance that these valves will be closed and, therefore, allowing them to be opened will not adversely impact the consequences of these events. If failure to close is postulated as a single failure for these events, the results would be bounded by the analyses described in the FSAR [final safety analysis report]. For example, the Locked Rotor accident assumes a stuck open steam generator power-operated pressure relief valve (SG PORV). The steam released by the assumed single failure of the SG PORV, for the twenty minutes until the valve is isolated, would exceed the expected releases as a result of failure to close valve 3MSS*V885, 3MSS*V886, or 3MSS*V887, which are in ¼ inch lines. Therefore, allowing these valves to be opened under administrative control does not effect the consequences of the previously evaluated accidents.

The FSAR, Section 15.1.5, provides the assumptions on steam releases for the consequences of the steam line break accident. The steam generator with the broken steam line is assumed to be open to the atmosphere for the duration of the event and, therefore, these valves being open would not impact that assumption. For the unaffected steam generators, steam is assumed released to the atmosphere to remove decay heat. These valves are in ¼ inch lines which means that any steam released via this path would only be a small fraction of decay heat and will not adversely affect control of decay heat removal. Therefore, whether these valves are open or not will not affect the consequences of a steam line break outside containment.

Allowing the RHR system containment isolation valves to be open, under administrative control in Mode 4, does not change the way the system is operated. This proposed change to the footnote does not change the operators response to an accident in Mode 4. Therefore, the addition of these valves does not affect the consequences of the previously evaluated accidents.

The proposed change to Technical Specification Surveillance 4.6.1.2.a will delete footnote ''*'' which referred to an exemption granted by the NRC to permit the Type A test to be delayed until RFO6 [refueling outage 6]. However, the current extended shutdown has significantly delayed RFO6 and NNECO intends to perform the Type A test during this midcycle shutdown. The deletion of the footnote does not alter the operation of any system or the containment or containment airlocks, as assumed for accident analyses.

Additionally, Technical Specifications 4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3, and Bases Sections 3/4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3 are reworded to provide clarity and consistency. These proposed changes do not alter the operation of any system or the containment or containment airlocks during accident analyses.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Technical Specifications 4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3 and Bases Sections 3/4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3 do not alter the operation of any system or the containment or containment airlocks, during normal operation or as assumed in accident analyses.

Deleting containment isolation valves from the list of those that are allowed to be opened under administrative control can not modify plant response to an accident. Adding administrative control when the RHR system containment isolation valves are opened in Mode 4 for normal plant cooldown and heatup can not create a new or different accident. Allowing valves to be opened

to heat the steam lines to the steam-driven auxiliary feedwater pump prior to testing does not create the possibility of a new or different accident. The administrative change to the valve designation can not modify plant response.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to Technical Specifications 4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3, and Bases Sections 3/4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3 do not alter the design, maintenance or function of any system or the containment or the containment airlocks. Additionally, the proposed changes do not alter the testing of any system or the containment or containment airlocks, or alter any assumption used in the accident analyses.

The considerations associated with administrative control are being added to the bases of the technical specification. These considerations are identical to those provided in GL 91–08 [Generic Letter 91–08]. This means that the changes will maintain the margin of safety. The valves that are allowed to be open in the steam lines to the steam-driven auxiliary feedwater [pump] do not impact the accident analyses and therefore do not reduce the margin of safety. The addition of the RHR system containment isolation valves reflects the fact that these valves are opened for heatup and cooldown in Mode 4. The change adds the requirements of administrative controls to these RHR system valves in Mode 4, but does not modify the use of these valves. The administrative change to the valve designation can not affect the margin of safety.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, CT

Date of amendment request: October 15, 1997.

Description of amendment request: Technical Specification Surveillances 4.1.2.3.1, 4.1.2.4.1, 4.5.2, 4.6.2.1, and 4.6.2.2 require the recirculation spray, quench spray, residual heat removal, centrifugal charging, and safety injection pumps to be tested on a periodic basis and after modifications that alter subsystem flow characteristics. The proposed changes to these surveillances would include replacing the specific surveillance pump pressure with a statement that the test be conducted in accordance with Specification 4.0.5, Inservice Testing Program. The proposed changes would also include a decrease in the required individual safety injection and centrifugal charging pump injection line flow rates, an increase in the allowed individual safety injection pump runout flow rate, and editorial changes to the surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The Technical Specification changes transfer control of the pump developed head requirements for the Centrifugal Charging, Safety Injection, Quench Spray, Residual Heat Removal, and Recirculation Spray pumps from the Technical Specifications to the Inservice Test program. The acceptance criteria will still assure that the safety analysis assumptions are valid. The Technical Specification changes reduce the minimum flow requirements for the Charging and Safety Injection pumps and increase the maximum allowed flow for the Safety Injection pumps. Modifying the surveillance requirements [cannot] cause an accident and, therefore, [cannot] increase the probability of an accident. The revised minimum required flows are consistent with the flows used in the accident analyses and, therefore, the change [cannot] increase the consequences of any accident. The safety injection pumps are disabled such that they [cannot] be a source of mass addition to the RCS [reactor coolant system] whenever the cold overpressure system is required to be operable. Therefore, the increase in the allowed maximum safety injection pump flow has no effect on the cold overpressure accident analysis.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes transfer control of the pump developed head requirements from the Technical Specifications to the Inservice Test program and modify the required flow surveillance values. The surveillance values that are used in the Inservice Test program and the Technical Specification are consistent with the accident analysis. The increase in the allowed maximum safety injection pump flow does not impact the cold overpressure accident analysis. The changes do not involve any changes to the way that the pumps are operated. The pumps will be used post-accident the same way as they are used prior to the change.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The control of the pump developed head acceptance criteria is being transferred from the Technical Specification to the Inservice Test program. The acceptance criteria, at a minimum, will assure that the design basis analyses are valid. The minimum pump flow surveillance requirements in Specification 4.5.2.h are consistent with the assumptions of the accident analysis. The maximum allowed Safety Injection flow does not exceed the vendor recommendation for maximum continuous runout flow. The NPSH [net positive suction head] available to the pumps during both the injection and recirculation phases post-accident

exceeds the NPSH required at the higher allowed flow. Also, the safety injection pumps are disabled so that they [cannot] be an injection source when the cold overpressure system is required to be operable which means that the increase in maximum flow does not affect the cold overpressure accident analysis. Restricting orifices are being installed in the injection lines from the safety injection and charging pumps to the Reactor Coolant System as required. The restricting orifices and the changes to the required flows will allow for resetting the throttle position of the existing throttle valves. The sizing of the restricting orifices and the associated re-throttling of the throttle valves will be in accordance with Regulatory Guide 1.82. The proposed changes allow for the setting of the throttle valve positions so that the openings will be larger than the sump screen mesh opening size while assuring that the design basis flow values are valid.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Deputy Director: Phillip F. McKee.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, NE

Date of amendment request: July 25, 1997.

Description of amendment request: The proposed amendment request would revise the Technical Specifications (TS) to implement 10 CFR Part 50 Appendix J, Option B by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program,'' with certain exceptions detailed in the licensee's application. This revision supersedes the staff's description of amendment request that was published on October 8, 1997 (62 FR 52586).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change implements Option B of 10 CFR Part 50 Appendix J on performance-based containment leakage testing. The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any parameters or conditions that contribute to the initiation of any accidents previously evaluated. The proposed change potentially affects the leak-tight integrity of the containment structure designed to mitigate the consequences of a Loss-of-Coolant Accident (LOCA). The function of the containment is to maintain functional integrity during and following the peak transient pressures and temperatures and limit fission product leakage following the design basis LOCA. Because the proposed change does not alter the plant design, only the frequency of measuring Type A, B, and C leakage, the proposed change does not directly result in an increase in containment leakage.

Test intervals will be established based on the performance history of components being tested. The frequency of monitoring the relatively few containment isolation valves and/or containment penetrations subject to above normal leakage will not decrease by implementing Option B of Appendix J. A performance based program will identify those valves and penetrations which must continue to be tested each refueling outage.

The risk resulting from the proposed changes is characterized as follows, based primarily on the results contained in NUREG–1493 ''Performance-Based Containment Leakage Test Program,'' the principal Technical Support Document used by the NRC as the basis for the Appendix J Final Rule:

Type A Testing

NUREG–1493 found that the effect of containment leakage on overall accident risk is minimal since risk is dominated by accident sequences that result in failure or bypass of the containment. Industry wide, Integrated Leak Rate Tests (ILRTs) have only found a small fraction of the leaks that exceed current acceptance criteria. Only three percent of all leaks are detectable only by ILRTs, and therefore, by extending the Type A testing intervals, only three percent of all leaks have a potential for remaining undetected for longer periods of time. In addition, when leakage has been detected by ILRTs, the leakage rate has been only marginally above existing requirements. The Fort Calhoun Station Unit No. 1 Type A testing confirms the industry-wide experience that a majority of the leakage experienced during Type A testing is through components tested by Type B and C tests.

NUREG–1493 found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, show that increasing the Type A leakage test intervals would have a minimal impact on public risk.

Type B and C Testing

NUREG–1493 found that while Type B and C tests can identify the vast majority (greater than 95 percent) of all potential leakage paths, performance-based alternatives to current local leakage-testing requirements are feasible without significant risk impacts. The risk model used in NUREG–1493 suggests that the number of components tested would be reduced by about 60 percent with less than a three-fold increase in the incremental risk due to containment leakage. Since, under existing requirements, leakage contributes less than 0.1 percent of overall accident risk, the overall impact is very small. In addition, the NRC's Final Regulatory Impact Analysis concluded that while the extended testing intervals for Type B and C tests led to minor increases in potential offsite dose consequences, the beneficial expected decrease in onsite worker dose received during ILRT and local leak rate testing exceeds (by at least an order of magnitude) the potential off-site dose consequences.

Therefore, the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents.

This change involves the reduction of Type A, B, and C test frequency. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending the test frequency has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change only affects the frequency of Type A, B, and C testing. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed.

The frequency of monitoring the relatively few containment isolation valves and/or containment penetrations subject to above normal leakage will not decrease by implementing Option B of Appendix J. A performance based program will identify those valves and penetrations which must continue to be tested each refueling outage. NUREG–1493 has determined that, under several different accident scenarios, the increased risk of radioactivity release from containment is negligible with the implementation of these proposed changes.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to La, which is stated in the Fort Calhoun Station Unit No. 1 Technical Specifications to be 0.1 percent by weight of the containment air per 24 hours at 60 psig.

The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure. The margin to safety for the offsite dose consequences of postulated accidents directly related to the containment leakage rate is maintained by meeting the 1.0 La acceptance criteria. The La value is not being modified by this proposed change.

Except for the method of defining the test frequency, no change in the method of testing is being proposed. The Type B and C tests will continue to be done at 60 psig or greater. Other programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, NE 68102.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, NY

Date of amendment request: September 3, 1997.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to revise the number of hours operating personnel can work in a normal shift. The proposed amendment also contains some administrative changes to the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Establishing operating personnel work hours at, ''an 8 to 12 hour day, nominal 40 hour week,'' allows normal plant operations to be managed more effectively and does not adversely effect performance of operating personnel. Overtime remains controlled by site administrative procedures in accordance with NRC Policy Statement on working hours (Generic Letter 82–12). If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. No physical plant modifications are involved and none of the precursors of previously evaluated accidents are affected. Therefore, this change will not involve a significant increase in the probability or consequence of an accident previously evaluated.

B. Editorial changes clarify section 6.2.2.g without changing the intent or meaning. The proposed change meets the intent of the NRC Policy Statement on working hours (Generic Letter 82–12).

C. Changes to sections 3.10.6.1.a and 3.10.9 do not change the intent or meaning of the technical specification sections. Clarification to the table notation in section 4.1 related to the definition of shift checks to monitor plant conditions will continue as intended but are allowed to increase up to at least once per 12 hours. This increase is consistent with standard industry practice as represented by the Standard Technical Specifications (STS), Reference 1.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

A. Establishing operating personnel work hours at, ''an 8 to 12 hour day, nominal 40 hour week,'' allows normal plant operations to be managed more effectively and does not adversely effect performance of operating personnel. If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82–12). No physical modification of the plant is involved. As such, the change does not introduce any new failure modes or conditions that may create a new or different accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

B. Editorial changes clarify section 6.2.2.g without changing the intent or meaning. The proposed change meets the intent of the NRC Policy Statement on working hours (Generic Letter 82–12).

C. Changes to sections 3.10.6.1.a and 3.10.9 do not change the intent or meaning of the technical specification sections. Clarification to the table notation in section 4.1 related to the definition of shift checks to monitor plant conditions will continue as intended but are allowed to increase up

to at least once per 12 hours. This increase is consistent with standard industry practice as represented by the Standard Technical Specifications (STS), Reference 1.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

A. Establishing operating personnel work hours at, ''an 8 to 12 hour day, nominal 40 hour week,'' allows normal plant operations to be managed more effectively and does not adversely effect performance of operating personnel. If 8 hour shifts are maintained in part or whole, then acceptable levels of performance from operating personnel is assured through effective control of shift turnovers and plant activities. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82–12) and is consistent with the Standard Technical Specifications. The proposed change involves no physical modification of the plant, or alterations to any accident or transient analysis. There is no Basis to section 6 of the Technical Specifications, and the changes are administrative in nature. Therefore, the change does not involve any significant reduction in a margin of safety.

B. Editorial changes clarify section 6.2.2.g without changing the intent or meaning. The proposed change meets the intent of the NRC Policy Statement on working hours (Generic Letter 82–12).

C. Changes to sections 3.10.6.1.a and 3.10.9 do not change the intent or meaning of the technical specification sections. Clarification to the table notation in section 4.1 related to the definition of shift checks to monitor plant conditions will continue as intended but are allowed to increase up to at least once per 12 hours. This increase is consistent with standard industry practice as represented by the Standard Technical Specifications (STS), Reference 1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, NY 10601.

Attorney for licensee: Mr. David Blabey, 10 Columbus Circle, New York, NY 10019.

NRC Project Director: S. Singh Bajwa, Director.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, NY

Date of amendment request: September 29, 1997, as supplemented October 8, 1997. The September 29 application and October 8, 1997, supplement supersede the September 13, 1996, application and its April 24, 1997, supplement. This notice supersedes the notice published on October 9, 1996 (61 FR 197) in its entirety.

Description of amendment request: The proposed amendment would change the Ginna Station Technical Specifications (TSs) which would allow referencing of revision of the Ginna Station pressure and temperature limits report (PTLR) for the reactor coolant system (RCS) pressure and temperature (P/T) limits and low temperature overpressure protection (LTOP) limits. The proposed amendment would correct some typographical errors in the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise Administrative Controls Section 5.6.6.c to update the reference to the NRC's approval of the first use of the PTLR methodology, update the RCS P/T methodology to the final NRC approved version, allow use of ASME Code Case N–514 for LTOP enable temperature methodology, and to correct a typographical error. These changes complete implementation of Generic Letter 96–03 by referencing NRC approved methodology within the Administrative Controls. The updated RCS P/T methodology has been generically approved by the NRC while the use of ASME Code Case N–514 for LTOP enable temperature methodology was previously approved for use at Ginna Station by the NRC. As such, these changes are administrative in nature and do not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the methodology have been shown to ensure that the P/T and LTOP limits in the PTLR continue to meet all necessary requirements for reactor vessel integrity. These changes are administrative in nature since the limits were previously relocated to the PTLR under a separate LAR [License Amendment Request]. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, NY 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: S. Singh Bajwa, Director.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, CA

Date of amendment requests: December 22, 1995.

Description of amendment requests: The licensee proposes to delete the physical protection program reporting requirement from License Condition 2.G, and to clarify in License Condition 2.E that all the documents composing the physical protection program plans may not contain safeguards information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change is considered an administrative change. It has no impact on the probability or consequences of any of the accidents previously evaluated. This change revises license conditions for clarification and removes the burden of duplicate reporting requirements. This change does not affect the physical protection program as previously approved by the Nuclear Regulatory Commission (NRC). License Condition 2.E is being revised to clarify that the physical security, security force training and qualification, and safeguards contingency plans may or may not contain safeguards information. The security force training and qualification plan does not currently contain safeguards information.

A reporting requirement in License Condition 2.G is being revised to remove the reference to License Condition 2.E for the physical protection program. The reporting requirements for the physical protection program are located in the regulations, 10 CFR 73.71 and 10 CFR 73 part, Appendix G.

Therefore, the probability and consequences of an accident previously evaluated are not affected by these proposed changes.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change is considered an administrative change. It has no impact on equipment, systems, or structures such that a new or different kind of accident is created. This change revises license conditions to clarify that safeguards information may be located in the physical protection program plans and to remove duplicate and unnecessary reporting requirements for the physical protection program. There is no change associated with the implementation and maintenance of the physical protection program as previously approved by the NRC.

Therefore, the possibility of a new or different kind of accident from an accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

This proposed change is considered an administrative change only. It has no impact on the margin of safety associated with the physical protection program. This change revises license conditions to clarify the location of safeguards information in the physical protection program plans and remove duplicative and unnecessary reporting requirements for the physical protection program. The maintenance and implementation of the physical protection program is not affected by this change.

Therefore, there will not be a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, CA 92713.

Attorney for licensee: T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, CA 91770.

NRC Project Director: William H. Bateman.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, OH

Date of amendment request: October 22, 1997.

Description of amendment request: The amendment would change the Perry Nuclear Power Plant design basis as described in the Updated Safety Analysis Report. The change will add a description of the temperature control valves and associated bypass lines around the Emergency Closed Cooling System heat exchangers. These features are designed to ensure operability of the Control Complex Chilled Water System under post-accident load conditions, without the need for compensatory actions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is requesting Nuclear Regulatory Commission (NRC) review and approval of changes to the Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR) to incorporate descriptions (in the form of text, tables and drawings) of a modification to the plant involving two temperature control valves and associated temperature elements, and piping segments that have been installed in the Emergency Closed Cooling Water (ECC) System. These valves, temperature elements, and piping segments were installed to increase the overall reliability of the ECC System and the other safety related plant systems that it serves, to help ensure that they perform their specified safety functions without reliance on manual throttling actions.

The probability of occurrence and the consequences of an accident previously evaluated in the USAR are not considered to be increased as a result of the temperature control valve modification.

Based on conformance with the original system design criteria, the fact that the ECC System is an accident mitigation system, and that this modification does not introduce any new initiators to a previously postulated accident, the addition of this temperature control function can not increase the probability of occurrence of an accident previously evaluated in the USAR. Accidents reviewed involve the Loss of Coolant Accident applications described in USAR Chapter 6 with their corresponding consequence postulations shown in USAR Chapter 15, accident and transient scenarios as described in USAR Chapter 15, flooding and rupture postulations as described in USAR Chapter 3, and fire protection analyses as described in USAR Chapter 9.

The modification has been designed, procured, and installed to the original design codes and standards. The modification also satisfies single failure criteria and does not adversely affect the mitigation function of the ECC System. Therefore, the ability to mitigate accidents previously evaluated in the USAR is maintained and the radiological consequences of such accidents remain unaffected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The modification has been designed to satisfy the requirements of the original ECC System. A single failure of the new configuration will not result in more than the loss of one respective

ECC System loop as already analyzed. Analysis of flooding shows no scenario greater than the currently bounding event. Missile generation is not a concern since no mechanisms conducive to that potential have been introduced. From the electrical analysis perspective, analysis has shown no adverse effects on the Emergency Diesel Generator loadings or other system applications.

Based on the above discussions, the proposed change would not create the possibility of a new or different kind of accident than those previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

This request does not involve a significant reduction in a margin of safety. The modification, including design, procurement, and installation, has been performed in accordance with the applicable codes, standards, and installation specifications. The modification does not change the heat removal capabilities or any previously designed parameters of the ECC System. Hence, the ECC System margin of safety with respect to safety classification, protection, redundancy, heat removal capability, and seismic classification remains unaffected.

The margins of safety contained in the Technical Specifications and the associated Bases also remain unaffected by this modification due to conformance with the applicable codes, standards, and installation specifications. Specifically, Technical Specification 3.7.10, ''Emergency Closed Cooling Water (ECCW) System'' and the description in the Bases remain unchanged and fully applicable. The following Technical Specifications also remain unaffected and applicable: 3.3.3.2, ''Remote Shutdown System''; 3.7.1, ''Emergency Service Water (ESW) System—Divisions 1 and 2''; 3.7.4, ''Control Room Heating, Ventilation, and Air Conditioning (HVAC) System''; and the Technical Specifications related to Sections 3.8 (Electrical Power Systems), 3.5 (Emergency Core Cooling Systems (ECCS) and Reactor Core Isolation Cooling (RCIC) System) and 3.6 (Containment Systems). On this basis, the margins of safety defined in the Technical Specifications remain unchanged.

Therefore, the changes associated with this license amendment request do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, SC

Date of application for amendment: August 27, 1996, as supplemented December 18, 1996, January 17, February 18, March 27, April 4, April 25, April 29, May 30, June 2, June 13, June 18, August 4, August 8, September 10, October 2 (RNP RA/97–0216), October 2, (RNP RA/97–0207), October 13, and October 21, 1997.

Brief description of amendment: This amendment addresses a more restrictive change proposed by the licensee in minimum allowable containment pressure.

Date of publication of individual notice in **Federal Register**: October 7, 1997 (62 FR 52362).

Expiration date of individual notice: October 21, 1997.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, SC 29550.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, NJ

Date of amendment request: September 24, 1997.

Brief description of amendment request: The proposed amendment would add a surveillance requirement in Section 3/4.5.1 to perform a monthly valve position verification for each of the four residual heat removal crosstie valves.

Date of publication of individual notice in **Federal Register**: October 6, 1997 (62 FR 52162).

Expiration date of individual notice: November 5, 1997.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, NJ

Date of amendment request: September 29, 1997.

Brief description of amendment request: The proposed amendment would change Technical Specification 3/4.11.1, ''Liquid Effluents—Concentration.'' The proposed change adds a requirement to perform weekly sampling and monthly and quarterly composite analyses of the Station Service Water System when the Reactor Auxiliaries Cooling System is contaminated.

Date of publication of individual notice in **Federal Register**: October 6, 1997 (62 FR 52161).

Expiration date of individual notice: November 5, 1997.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in

connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 & 50–324, Brunswick Steam Electric Plant, Units 1 & 2, Brunswick County, NC

Date of amendment request: January 7, 1997, as supplemented on July 25, 1997, August 27, 1997, and September 15, 1997.

Brief description of amendment: The amendments correct an error involving the transposition of two of the reactor pressure vessel (RPV) pressure-temperature (P–T) limits curves between the Technical Specifications for the Brunswick Steam Electric Plant, Units 1 and 2 and update the hydrostatic pressure test limits curves for both units.

Date of issuance: October 7, 1997.

Effective date: October 7, 1997.

Amendment No.: 189 and 220.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: March 12, 1997 (62 FR 11485). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, NC 28403–3297.

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, SC

Date of application for amendment: August 27, 1996, as supplemented December 18, 1996, January 17, February 18, March 27, April 4, April 25, April 29, May 30, June 2, June 13, June 18, August 4, August 8, September 10, October 2 (RNP RA/97–0216), October 2, (RNP RA/97–0207), October 13, and October 21, 1997.

Brief description of amendment: This amendment addresses a more restrictive change proposed by the licensee in minimum allowable containment pressure.

Date of issuance: October 24, 1997.

Effective date: October 24, 1997.

Amendment No.: 176.

Facility Operating License No. DPR–23: Amendment revises the License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (62 FR 52362 dated October 7, 1997). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 6, 1997, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated October 24, 1997.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, SC 29550.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, NC

Date of application for amendment: February 21, 1997.

Brief description of amendment: This amendment adds a specific time limit to Technical Specification Table 3.3–3 to place an inoperable refueling water storage tank level channel in a bypassed condition.

Date of issuance: September 30, 1997.

Effective date: September 30, 1997.

Amendment No: 74.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17225). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, NC 27605.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, IL

Date of application for amendments: March 5, 1997 as supplemented October 3, 1997.

Brief description of amendments: The amendments would revise the Technical Specifications by removing the main steamline radiation monitor reactor scram function and the main steamline tunnel radiation isolation function.

Date of issuance: October 24, 1997.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 163, 158.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 18, 1997 (62 FR 19141). The October 3, 1997, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, IL 60450.

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, LA

Date of amendment request: August 29, 1996, supplemented August 29, 1996 (proprietary), September 5, and October 8, 1997.

Brief description of amendment: The amendment eliminates the Average Power Range Monitor (APRM) setpoint T-Factor setdown requirements and provides for reactivity anomaly calculation improvements. The request to decrease the local power range

monitor (LPRM) calibration frequency will be handled by separate review and action.

Date of issuance: October 10, 1997.

Effective date: October 10, 1997.

Amendment No.: 100.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 23, 1997 (61 FR 55032). The Licensee's letters dated August 29, 1996 (proprietary), September 5, and October 8, 1997, provided additional clarification and corrections to other TSs that would have erroneously referenced the TSs being eliminated and did not change the staff's initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA

Date of application for amendment: July 30, 1997, as supplemented September 19, and September 24, 1997.

Brief description of amendment: The amendment reduces current technical specification leakage limit from the decay heat removal system from 6.0 gallons per hour (gph) to 0.6 gph.

Date of issuance: October 15, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 205.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 27, 1997 (62 FR 45458). The September 19, and September 24, 1997, submittals did not affect the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA

Date of application for amendment: August 12, 1997, as supplemented August 28, September 15, October 3, 9, and 10, 1997.

Brief description of amendment: The amendment changes the technical specifications surveillance requirements for once-through steam generator inservice inspection for Cycle 12 operation.

Date of issuance: October 16, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 206.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 27, 1997 (62 FR 45458). The supplemental letters did not affect the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, TX, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, TX

Date of amendment request: August 14, 1997, as supplemented September 23, 1997. The supplement provided clarifying information within the scope of the amendment request and did not change the initial no significant hazards consideration determination.

Brief description of amendments: The amendments revise the allowed tolerance of the reactor coolant system volume provided in Technical Specification 5.4.2 to account for steam generator tube plugging.

Date of issuance: October 20, 1997.

Effective date: October 20, 1997.

Amendment Nos.: Unit 1—Amendment No. 92; Unit 2—Amendment No. 79.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 26, 1997 (62 FR 45278). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, CT

Date of application for amendment: February 7, 1997, as supplemented April 3 and September 19, 1997.

Brief description of amendment: The amendment clarifies the requirement for calibration of instrument channels that use resistance temperature detectors or thermocouples.

Date of issuance: October 22, 1997.

Effective date: As of the date of issuance, to be implemented within 90 days.

Amendment No.: 102.

Facility Operating License No. DPR–21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17236). The April 3 and September 19, 1997, letters provided additional and clarifying information that did not change the scope of the February 7, 1997, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, CT

Date of application for amendment: June 19, 1997.

Brief description of amendment: Technical Specification Table 2.2–1 NOTES 1 and 3 define the values for the constants used in the Overtemperature Delta-T and Overpower Delta-T reactor trip system instrumentation setpoint calculators. The amendment makes changes to the NOTES as well as the associated Bases section.

Date of issuance: October 22, 1997.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 152.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 30, 1997 (62 FR 40852). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, MI

Date of application for amendments: November 6, 1996, as supplemented April 10 and October 1, 1997.

Brief description of amendments: The amendments revise Technical Specifications governing the cooling water system and are a partial response to the licensee's application. The changes improve plant operation based on operational experience with the vertical motor-driven cooling water pump. The changes also incorporate information gathered by the licensee during its self-assessment Service Water System Operational Performance Inspection (SWSOPI) completed in late 1995. The remainder of the licensee's application will be addressed in a separate licensing action.

Date of issuance: October 21, 1997.

Effective date: October 21, 1997, with full implementation within 90 days.

Amendment Nos.: 131 and 123.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 29, 1997 (62 FR 4338) The April 10 and October 1, 1997, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, MI 55401.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, PA

Date of application for amendment: June 30, 1997, as supplemented by letter dated September 26, 1997.

Brief description of amendment: Revises the minimum critical power ratio (MCPR) safety limit in Section 2.1 of the Technical Specifications from 1.07 to 1.11 for two recirculation loops in operation. For a single loop in operation, the MCPR will change from 1.08 to 1.12. The new MCPR safety limits reflect the effect of the new General Electric—13 part length fuel design and other Peach Bottom core-specific parameters.

Date of issuance: October 9, 1997.

Effective date: As of the date of issuance, to be implemented prior to startup from Unit 3 refueling outage 3R11.

Amendment No.: 225.

Facility Operating License No. DPR–56: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 13, 1997 (62 FR 43373).

The supplemental letter provided clarifying information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, PA

Date of application for amendments: April 9, 1997.

Brief description of amendments: These amendments revise the TSs to clarify existing battery-specific gravity requirements, delete the requirement to correct specific gravity values based on electrolyte level, and allow the use of charging current measurements to verify the battery's state of charge.

Date of issuance: October 8, 1997.

Effective date: Both units, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 123 and 88.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 4, 1997 (62 FR 30643).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 8, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, AL

Date of amendments request: March 7, 1997.

Brief Description of amendments: The amendments change the Technical Specifications for both Farley units to allow operability testing for certain containment isolation valves during defueled status.

Date of issuance: October 17, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1—130; Unit 2—123.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: April 23, 1997 (62 FR 19834).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, AL 36302.

Southern Nuclear Operating Company, Inc., Docket No. 50–348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, AL

Date of amendment request: September 3, 1997.

Brief Description of amendment: The changes reduce the number of required incore detectors necessary for continued operation for the remainder of Cycle 15 only.

Date of issuance: October 23, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 131.

Facility Operating License No. NPF–2: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 10, 1997 (62 FR 47695).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1997.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, AL.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, TN

Date of application for amendment: June 20, 1997.

Brief description of amendment: Modify the Watts Bar Technical Specifications (TS) to incorporate the use of Code Case N–514 into the methodology for the Pressure-Temperature Limits Report.

Date of issuance: October 21, 1997.

Effective date: October 21, 1997.

Amendment No.: 9.

Facility Operating License No. NPF–90: Amendment revises the TS.

Date of initial notice in **Federal Register**: September 10, 1997 (62 FR 47700).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1997.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, KS

Date of amendment request: July 3, 1997, as supplemented by letter dated August 20, 1997.

Brief description of amendment: The amendment revises Surveillance Requirements 4.3.1.2 and 4.3.2.2, and Technical Specifications 3/4.3.1 and 3/4.3.2, and associated Bases Sections B 3/4.3.1 and B 3/4.3.2 to eliminate periodic response time testing requirements for selected pressure and differential pressure sensors in the reactor trip system and engineered safety features actuation system instrumentation channels.

Date of issuance: October 20, 1997.

Effective date: October 20, 1997, to be implemented prior to restart from the ninth refueling outage currently scheduled to start on October 4, 1997.

Amendment No.: 113.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 30, 1997 (62 FR 40862).

The August 20, 1997, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, KS 66801 and Washburn University School of Law Library, Topeka, KS 66621.

Dated at Rockville, Maryland, this 29th day of October 1997.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29138 Filed 11–4–97; 8:45 am]

BILLING CODE 7590–01–P

THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

The Eighteenth Meeting of the President's Council on Sustainable Development (PCSD) in Atlanta, Georgia

Summary: The President's Council on Sustainable Development (PCSD), a Presidential Commission with representation from industry, government, environmental, and Native American organizations, will convene its eighteenth meeting in Atlanta, Georgia on Thursday, November 20, 1997.

Under its current charter, the Administration asked the Council to continue its work by continuing to forge consensus on policy, demonstrating implementation, getting the word out about sustainable development, and evaluating progress. The Council will advise the President in four specific areas: domestic implementation of policy options to reduce greenhouse gas emissions, next steps in building the new environmental management system of the 21st century, promoting multi-jurisdictional and community cooperation in metropolitan and rural areas, and policies that fosters the United States' leadership role in sustainable development internationally.

At the Council's last meeting in Tulsa, Oklahoma on September 22, 1997, members were briefed on the science impacts, technology impacts, and economics related to climate change. The Council also heard from Tulsa's community about ways in which the climate change issue affects their lives.

At this next meeting, the Council will receive input from a community forum on climate change, focus on technology options to reduce greenhouse gas emissions and hear from a series of experts in the field. Specifically, the discussion will address the following agenda items:

- Current sources of greenhouse gas emissions; and
- Technology opportunities in a variety of sectors within the United States economy to reduce greenhouse gas emissions.

Public comment period: The Council will seek public comment on potential Council activities to implement the Administration's directive.

Specifically, the Council is interested in hearing from the public on the following questions:

- How might climate change affect the quality of life in the Atlanta region?
- Are there local opportunities in Atlanta, Georgia and surrounding regions to reduce greenhouse gas emissions?
- What policy recommendations should the Council give to President Clinton to more quickly develop and deploy energy efficient technologies?

The Council's previous recommendations to the President may be found in two reports: Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future (March 1996) and Building on Consensus: A Progress Report on Sustainable America (January 1997). Copies of both reports can be ordered by calling 1–800–363–3732 or downloaded off the Internet at ''http://www.whitehouse.gov/PCSD''.

Dates/Times: Thursday, November 20, 1997 from 9:00 a.m. to 1:00 p.m.

Place: Georgia Public Broadcasting Building, 206 14th Street in the main floor television studio, Atlanta, Georgia, 30318. PH: 404–685–2253; FAX: 404–756–2417.

Status: Open to the public. Public comments are welcome and may be submitted orally on November 20 or in writing any time prior to or during the meeting. Please submit written comments prior to meeting to: PCSD, Public Comments, 730 Jackson Place, NW, Washington, D.C. 20503, or fax to:

202/408–6839, E-mail: ''infopcsd@aol.com''.

Contact: Paul Flaim, Administrative Assistant, at 202/408–5296.

Sign Language Interpreter: Please call the contact if you will need a sign language interpreter.

Martin A. Spitzer,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 97–29288 Filed 11–4–97; 8:45 am]

BILLING CODE 3125–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Orlando Super Card, Inc.; Order of Suspension of Trading

November 3, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Orlando Super Card, Inc. (''Orlando Super Card'') because of questions regarding (1) the trading and true value of the common stock of Orlando Super Card; and (2) the accuracy and adequacy of publicly disseminated information concerning Orlando Super Card's financial prospects.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, November 3, 1997 through 11:59 p.m. EST, on November 14, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29353 Filed 11–3–97; 11:15 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39284; File No. SR–NASD–97–38]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change, and Amendment No. 1 thereto, Relating to the Application of the NASD Corporate Financing Requirements To Exchange Offers, Mergers and Acquisitions, and Other Similar Transactions

October 29, 1997.

On May 23, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the application of Rules 2710 and 2720 to exchange offers, merger and acquisition transactions, and other similar corporate reorganizations. On June 19, 1997, the NASD submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 38822 (July 8, 1997), 62 FR 38150 (July 16, 1997). No comments were received on the proposal. This order approves the proposed rule change as amended.

I. Introduction

Rule 2710 of the Conduct Rules of the NASD (''Corporate Financing Rule'') requires that members file with the Corporate Financing Department of the NASD public offerings of securities for review of the proposed underwriting terms and arrangements, which terms and arrangements must comply with that rule. Rule 2720 of the Conduct Rules (''Conflicts Rule'') establishes standards in addition to those in Rule 2710 to address the conflicts-of-interest that occur in connection with a public offering of the securities of a member, the parent of a member, an affiliate of a member, or other issuer with whom the member has a conflict-of-interest. For an offering to be subject to filing under the Corporate Financing and Conflicts Rules, a member must be considered to be ''participating'' in the offering and the offering must be one that is subject to the filing requirements. Paragraph (a)(5) of Rule 2710 defines ''participation or participating in a public offering'' to include participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to Rule 13e–3 under the Act.[4]

With respect to offerings subject to compliance with the Rules, the Corporate Financing and Conflict Rules apply to most ''public offerings'' of securities, which is defined in Rule 2720(b)(14) to include, among other things, ''offerings made pursuant to a merger or acquisition.'' Neither the Corporate Financing Rule nor the Conflicts Rule currently identifies the types of mergers and acquisitions subject to filing and compliance with those rules. The NASD has, therefore, determined to amend Rules 2710 and 2720 to clarify the application of the requirements of the Corporate Financing and Conflicts Rules to exchange offers, mergers and acquisitions, and similar corporate reorganizations and make other related amendments. In view of the increasing amount of merger and acquisition activity, the NASD believes that the proposed amendments to Rule 2710 and 2720 will provide certainty and eliminate confusion regarding their application to such transactions.

With respect to the time-sensitive nature of many mergers and acquisitions, exchange offers, and similar corporate reorganizations that would become subject to filing as a result of approval of the proposed rule change, the NASD previously announced a policy to expedite the review of such offerings by the Corporate Financing Department.[5] In general, it is anticipated that a comment letter will be issued by the Corporate Financing Department of the NASD within 48 hours of receipt of the filing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NASD amended Rule 2710(b)(7)(F)(i) to replace the phrase ''listed on the Nasdaq National Market, the New York Stock Exchange, or American Stock Exchange'' with ''designated as a Nasdaq National Market security or listed on the New York Stock Exchange or American Stock Exchange.'' Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Kathy England, Assistant Director, Division of Market Regulation, SEC (June 18, 1997).

[4] 17 CFR 240.13e–3.

[5] See Notice to Members 95–73 (September 1995) (''NTM 95–73''). A copy of NTM 95–73 was submitted as Exhibit 2 to the NASD's proposal and is available for inspection and copying in the Commission's Public Reference Room.

of the documents related to such a transaction, so long as the documentation and related information submitted meet the requirements set forth in subparagraphs (b) (5) and (6) of Rule 2710 and the appropriate filing fee is included.

II. Description of the Proposal

The NASD is proposing to amend the Corporate Financing and Conflicts Rules to clarify their application to exchange offers, merger and acquisition transactions, and other similar corporate reorganizations and make other related changes. The amendments limit the application of the rules to narrow situations where pre-offering review under the Corporate Financing Rule or the application of the Conflicts Rule is believed necessary to protect investors. Thus, in general, an exchange offer will be subject to the Conflicts Rule and required to be filed with the Corporate Financing Department for review when a member is participating in solicitation activities related to an offer involving securities that are exempt from SEC registration. In addition, exchange offers, merger and acquisition transactions, and other similar corporate reorganizations will be subject to the Conflicts Rule, and required to be filed for review, if there is an issuance of securities that results in the direct or indirect public ownership of a member.

Description of Proposed Rule Change to Rule 2710

The filing requirements of the Corporate Financing Rule subject an offering to compliance with that rule and, if the offering consists of securities issued by a member, the parent of a member, an affiliate of a member, or an issuer with which the member has a conflict-of-interest (as that latter term is defined in Rule 2720), to compliance with the Conflicts rule. Paragraph (b)(9) of Rule 2710 is intended to provide clarification of certain types of public offerings required to be filed with the Corporate Financing Department of the NASD for review. Paragraph (b)(9) is proposed to be amended to add new subparagraph (H) that would require the filing of exchange offers exempt from registration under Sections 3(a)(4), 3(a)(9), and 3(a)(11) of the Securities Act of 1933 (''Securities Act''),[6] where the member engages in active solicitation, and exchange offers registered with the Commission if a member acts as a dealer manager.[7] Active solicitation occurs when a member directly solicits or contacts securityholders, acts as a dealer manager, performs tasks that are performed by investor relations firms (*i.e.*, contacts securityholders to determine the action they intend to take), contacts securityholders to determine whether they have received the offering materials, answers unsolicited contacts, and participates in meetings with securityholders or their advisors before or after an exchange offer begins.[8] In contrast, active solicitation does not encompass the delivery of a ''fairness opinion,'' advice as to the structure and terms of the exchange offer, assistance in the preparation of the offering documents to be sent to securityholders, nor any other functions that do not involve direct solicitation or direct contact with securityholders.

The NASD is not extending the filing requirement to other public exchange offers exempt from registration because such offerings are either subject to the oversight of a court or of another review authority, such as the Comptroller of the Currency or the Federal Deposit Insurance Corporation.[9]

With respect to exchange offers registered on Forms S–4 or F–4, filing is expressly limited to those distributions where the member is engaged by the company to act as dealer manager and solicits consents on behalf of the company to the proposed reorganization and to otherwise facilitate the exchange of securities. In such exchange offers, the member generally acts as a financial advisor to help structure the transaction and will receive a fee, as well as distribution-related compensation for services rendered.

To the extent an exchange offer exempt under Sections 3(a) (4), (9), and (11) of the Securities Act or registered with the SEC does not fall within the filing requirement in new subparagraph (b)(9)(H) to Rule 2710 because the member is not engaging in solicitation activities or is not acting as dealer manager, respectively, the exchange offer is considered exempt from compliance with the Corporate Financing and Conflicts Rules because the member is not considered to be ''participating in the offering.''

The NASD, however, is also proposing to add subparagraph (b)(7)(F) to Rule 2710 to exempt from filing exchange offers where the securities to be issued or the securities of the company to be acquired are designated as a Nasdaq National Market security or listed on the New York Stock Exchange (''NYSE'') or American Stock Exchange (''Amex'') or where the company issuing securities qualifies to register securities on SEC Registration Form S–3, F–3 or F–10.

The exemption for companies qualified to register securities on SEC Registration Form S–3, F–3, or F–10 applies to those companies that meet the standards for the Forms in subparagraphs (C) (i) and (ii) of paragraph (b)(7) of Rule 2710 in order to restrict the exemption to domestic companies that meet the standards for Forms S–3 and F–3 prior to October 21, 1992 and to Canadian-incorporated foreign private issuers that meet the standards for Form F–10 approved in Release No. 34–29354.[10] This provision would require, in general, that a domestic company have a three-year history as a public reporting company, and be in compliance with the current year's periodic reporting requirements of the Act (with respect to the timely filing of Forms 10–Qs and 10–Ks). In addition, the minimum required market value of a company's common stock must be as follows: Form S–3, $150 million (or $100 million market value of voting stock and three million shares annual trading volume); and Form F–3, $300 million held world-wide. For Form F–10, Canadian private issuers must have (CN) $360 aggregate value of voting stock and a public float of (CN) $754 million.

Paragraph (b)(7) of the Corporate Financing Rule, which includes the two filing exemptions for exchange offers discussed above, lists those public offerings not required to be filed for review with the Corporate Financing Department. However, the underwriting terms and arrangements of such exempt offerings must be in compliance with the requirements of Rule 2710 or 2810,

[6] 15 U.S.C. 77c(a)(4), 77c(a)(9), and 77c(a)(11).

[7] In this context, the term ''exchange offer'' is intended to refer to transactions where one security is issued in exchange for another security of the issuer or another entity, and is distinguished from mergers, acquisitions and other corporate reorganizations (except if accomplished through an exchange offer) registered on a Form S–4 or F–4.

[8] The concept of ''solicitation'' in rules 2710 and 2720 is different than in Section 3(a)(9) of the Securities Act. For example, activities by a broker/dealer that would not be ''soliciting'' for purposes of Section 3(a)(9) may nonetheless come within the concept of ''solicitation'' for purposes of the requirement to file an offering with NASD Regulation for review under Rules 2710 and 2720. See applicable SEC no-action letters on Section 3(a)(9). Further, the application of the filing requirements of Rule 2710 does not depend upon whether remuneration is paid to the member. Thus, regardless of whether a member is paid for soliciting the exchange, an exchange offer would be subject to filing if the member engages in solicitation activities as described in this rule filing.

[9] See 15 U.S.C. 3(a)(5), 3(a)(6), 3(a)(10), and 3(a)(12).

[10] See Securities Exchange Act Rel. No. 29354 (June 21, 1991), 56 FR 30036 (July 1, 1991); and Notice to Members 93–88 (December 1993), which includes a copy of Forms S–3 and F–3 as those Forms existed prior to October 21, 1992 and Form F–10 as approved by the SEC on June 21, 1991.

as applicable. Moreover, any offering exempt from filing under paragraph (b)(7) must nonetheless be filed if the offering is subject to Rule 2720, the Conflicts Rule, and is subject to review by the Corporate Financing Department for compliance with Rules 2710 and 2720.[11]

Paragraph (b)(9) of the Corporate Financing Rule is also proposed to be amended to add subparagraph (I) to require the filing of any exchange offer, merger or acquisition transaction, and similar corporate reorganization that involves an issuance of securities that results in the direct or indirect public ownership of a member.[12] Such offerings would be subject to compliance with Rule 2710 and Rule 2720.[13] The NASD has long held the view that pre-offering review is vital to protect investors when the member and the issuer are in a control relationship that is addressed through the application of Rule 2720. The NASD has previously clarified that mergers or acquisitions involving an issuer and a member or its parent that result in the direct or indirect public ownership of a member are subject to compliance with Rule 2720, regardless of whether the merger or acquisition occurs subsequent to the issuer's initial public offering.[14]

Paragraph (b)(8) of Rule 2710 lists those offerings that, although within the definition of ''public offering,'' are exempted from compliance with Rule 2710 and 2720. The NASD is proposing to add subparagraphs (I) and (J) to paragraph (b)(8) to provide an exemption from filing and compliance with Rules 2710 and 2720 for:

1. Spin-off and reverse spin-off transactions involving a subsidiary or affiliate of the issuer, where the securities are issued as a dividend or distribution to current shareholders; and

2. Securities registered with the SEC in connection with a merger, acquisition, or other similar business combination, except if the offering would be filed under subparagraph (b)(9)(I), described above, because it involves a transaction that results in the direct or indirect public ownership of a member.

In addition, the NASD is proposing to add subparagraph (c)(6)(B)(v) to Rule 2710 to provide that it is an unreasonable term and arrangement for a member to receive a right to receive a ''tail fee' arrangement that has a duration of more than two years from the date the member's services are terminated, in the event an offering is not completed and the issuer subsequently consummates a similar transaction. Such arrangements are currently only provided in connection with exchange offers. It is believed that the real benefit derived by a company that grants a ''tail fee' arrangement is the creativity of the strategic advice given by the member for the particular transaction that may include, among other things, assisting the company in defining objectives, performing valuation analyses, formulating restructuring alternatives, and structuring the offering. In particular, in the case of an exchange offer, a member providing financial advance will generally have provided considerable ongoing financial advisory services to the company.

The proposed ''tail fee'' prohibition also, however, would permit a member to demonstrate on the basis of information satisfactory to the NASD that an arrangement of more than two years is not unfair or unreasonable under the circumstances. The ability of the staff of the Corporate Financing Department to grant exceptions upon request is intended to be used where the member can demonstrate that the creativity of the strategic advice provided by the member has a potential benefit to the company for more than two years. In the case of exchange offers exempt from filing but subject to compliance with the Rule under subparagraph (b)(7)(F), where the ''tail fee'' arrangement is proposed to have a duration of longer than two years, a member would be required to request an opinion of the staff as to whether the arrangement is permissible under the Rule. In the case of any other offering exempt from filing under subparagraph (b)(7), a member is required to request an opinion of the staff as to whether it has ''no objections'' as to any proposed ''tail fee'' arrangement.

As set forth above, although ''tail fee'' arrangements are currently granted only in connection with exchange offers, the provision is written to regulate such an arrangement in connection with any type of public offering subject to compliance with the Corporate Financing Rule. Where a ''tail fee'' arrangement is proposed in connection with public offerings that are not exchange offers, the NASD staff will consider whether the arrangement is justified by the services provided by the member to the issuer. Where the member does not appear to have provided the type of substantial structuring and/or advisory services to the issuer similar to those that are described above, other than those services traditionally provided in connection with a distribution of a public offering, a proposed ''tail fee'' arrangement will be considered to be unfair and unreasonable on the basis that the arrangement would violate Rule 2110 (the Association's basic ethical rule) and Rule 2430 since the member is proposing to be paid for services that the member has not provided to the issuer. This position is consistent with subparagraph (c)(6)(B)(iv) of Rule 2710, which prohibits a member from receiving compensation in connection with an offering of securities that is not completed, except for compensation received in connection with a transaction (*i.e.*, a merger transaction) that occurs in lieu of the proposed offering as a result of the member's efforts and the reimbursement of the member's reasonable out-of-pocket accountable expenses.

Description of Proposed Rule Change to Rule 2720

The NASD is proposing to amend the Conflicts Rule to conform the scope section of the Rule to the amendments to the filing requirements of Rule 2710 and to clarify the responsibilities of a qualified independent underwriter in an exchange offer subject to compliance with rule 2720. Paragraph (a) of Rule 2720 is proposed to be amended to add subparagraph (3) to provide that in the case of an exchange offer, merger and acquisition transaction, or similar corporate reorganization, compliance with Rule 2720 is required only if the offering comes within subparagraph (b)(9)(h) of Rule 2710, where the issuance of securities is by a member or the parent of a member or if the offering comes within subparagraph (b)(9)(I). As set forth above, proposed subparagraph (b)(9)(H) would require the filing of exchange offers exempt under Section 3(a)(4), 3(a)(9), and 3(a)(11) of the Securities Act, if the member's participation involves active solicitation activities, and of exchange offers registered with the SEC, if the member is acting as dealer manager. Thus, the exemption from filing for such exchange offers provided by proposed

[11] See *infra* note 14.

[12] This latter filing requirement does not, it is important to note, require the filing of exchange offers, mergers, acquisitions, and corporate reorganizations involving an offering of securities of an affiliate of a member other than a parent or of an issuer that otherwise has a conflict-of-interest with a member.

[13] Paragraph (n) of Rule 2720 provides that all offerings of securities included within the scope of that Rule are also subject to the provisions of Rule 2710, even though an exemption from filing may be available under Rule 2720.

[14] See Notice to Members 88–100 (December 1988). In that notice, the Association expressed its special concerns regarding the merger of blank check companies in the penny stock market with privately held holding companies of members, indirectly creating a publicly-held NASD member without having to comply with Rule 2720.

subparagraph (b)(7)(F), where the securities are designated as a Nasdaq National Market security or listed on the NYSE or Amex or the issuer qualifies to register the securities on Form S–3, F–3, or F–10, is not available if the exchange offer is by a member or parent of a member.[15] As further set forth above, proposed subparagraph(b)(9)(I) would require the filing of any exchange offer, merger and acquisition transaction, or similar corporate reorganization involving an issuance of securities that results in the direct or indirect public ownership of a member.[16]

The NASD is also proposing to amend Rule 2720 to clarify the obligations of a qualified independent underwriter[17] that would be required by subparagraph (c)(3) of Rule 2720 to perform due diligence with respect to the offering document and provide a recommendation with respect to the exchange value of an exchange offer, merger and acquisition transaction, or similar corporate reorganization. Currently, the Conflicts Rule requires that the price at which an equity issue or the yield at which a debt issue is to be distributed to the public be established at a price no higher or yield no lower than that recommended by a qualified independent underwriter (who shall also participate in the preparation of the registration statement and shall exercise the usual standards of ''due diligence'' in respect thereto). The NASD is proposing to amend subparagraph (c)(3)(A) of Rule 2720 by adding a new exception to state that in any exchange offer, merger and acquisition transaction or corporate reorganization subject to Rule 2720, the provision which requires that the price or yield of the securities be established based on the recommendation of a qualified independent underwriter shall not apply and instead, the exchange value of the securities being offered in the transaction shall not be less than that recommended by a qualified independent underwriter.

Finally, in order to make clear that the offerings that are exempt under subparagraph (b)(8) of Rule 2710 (that include exemptions for offerings of securities issued in a spin-off or in a merger registered with the SEC on Form S–4 or F–4) are also exempt from Rule 2720, paragraph (o) of Rule 2720 is being amended to reference the exemptions from Rule 2720 that are provided in subparagraph (b)(8) of Rule 2710.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b) of the Act.[18] Among other things, Section 15A(b)(6) of the Act requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[19]

Specifically, the Commission believes that the proposed amendments to Rules 2710 and 2720 should reduce confusion regarding the application of the NASD's Corporate Financing and Conflicts Rules to exchange offers, mergers and acquisitions, and other similar corporate reorganizations. The Commission supports efforts by the NASD to streamline the process for participation by members in public offerings by clarifying when pre-offering review is necessary and in the public interest.

A. Amendment to Rule 2710

The Commission believes that it is appropriate to amend Rule 2710 to require filing of exchange offers exempt from registration under Sections 3(a)(4), 3(a)(9), and 3(a)(11) of the Securities Act,[20] where the member engages in active solicitation, and exchange offers registered with the Commission if a member acts as a dealer manager. When a member actively solicits securityholders with respect to exempted exchange offers, or acts as a dealer manager with respect to exchange offers registered on Form S–4 or F–4, pre-offering review is necessary to prevent fraudulent and manipulative acts and practices, and protect investors.

The Commission believes that it is appropriate to amend Rule 2710 to exempt from filing exchange offers where securities to be issued or the securities of the company to be acquired are designated as a Nasdaq National Market security or listed on the NYSE or Amex or where the company issuing securities qualifies to register securities on SEC registration Form S–3, F–3 or F–10. The Commission notes that the listing standards of the three markets require a minimum number of independent directors on the Board of Directors. This requirement should ensure that the independent directors of the acquiror or target will evaluate the offer and that sufficient information will be distributed to shareholders and markets, so that investors can make an informed decision regarding whether to sell or hold securities.

The Commission also believes that it is appropriate to amend Rule 2710 to exempt from filing spin-off and reverse spin-off transactions involving a subsidiary of affiliate of the issuer, where the securities are issued as a dividend or distribution to current shareholders, and securities registered with the SEC in connection with a merger, acquisition, or other similar business combination. The Commission agrees that spin-off transactions to existing securityholders as a dividend or other distribution may not involve an investment decision by shareholders and, consequently, any member acting as a financial advisor to the parent company is not generally involved in any public solicitation in connection with the transaction.[21] Further, merger transactions and similar business combinations registered with the SEC generally only involve a member in providing financial advice to the Board of Directors of the acquiror or target, that may include an obligation that the

[15] *See supra* note 13.

[16] This filing requirement is consistent with the position announced in Notice to Members 88–100 (December 1988) and paragraph (i) of Rule 2720 which states: ''* * * if an issuer proposes to engage in any offering which results in the public ownership of a member * * * the offering shall be subject to the provisions of this Rule to the same extent as if the transaction had occurred prior to the filing of the offering.''

[17] A member must meet a number of requirements in order to be qualified independent underwriter under subparagraph (b)(15) of Rule 2720, including the requirement that the member ''has agreed in acting as a qualified independent underwriter to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, specifically including those inherent in Section 11 thereof.'' Participation of a qualified independent underwriter is not required by Rule 2720 if the offering is of equity securities that meet the test of having a ''bona fide independent market'' or is of debt that is rated investment grade.

[18] 15 U.S.C. 78f(b).

[19] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 77c(a)(4), 77c(a)(9), and 77c(a)(11).

[21] It should be noted, however, that where a spin-off is followed by a traditional public offering by the spun-off company to raise capital, the company's initial public offering would be subject to the Corporate Financing Rule's filing requirements and to compliance with Rule 2720. This analysis would require the filing of any public offering to raise capital that follows a merger, acquisition, exchange offer or other corporate reorganization that would be exempt from filing under Rule 2710 or exempt from compliance with Rules 2710 and 2720. In the latter case, the offering may fall within another exemption from filing, such as the filing exemptions provided by subparagraphs (b)(7) (A), (C) or (D) of Rule 2710.

member issue a fairness opinion regarding the acquisition price.

B. Amendment to Rule 2720

The Commission believes that it is appropriate to amend Rule 2720 to state that in any exchange offer, merger and acquisition transaction or corporate reorganization subject to Rule 2720, the provision which requires that the price or yield of the securities be established based on the recommendation of a qualified independent underwriter shall not apply and, instead, the exchange values of the securities being offered in the transaction shall not be less than that recommended by a qualified independent underwriter. The Commission believes that the proposed new provision would clarify that the obligation of the qualified independent underwriter is to ensure that the recipient of the exchange offer, which is the party intended to be protected by the participation of a qualified independent underwriter, shall not receive fewer of the securities being issued in exchange for each security held by the recipient than is recommended by the qualified independent underwriter.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–97–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

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[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39285; File No. SR–NASD–97–26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approved to Amendment No. 3 Relating to an Extension and Expansion of the Pilot for the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

October 29, 1997.

I. Background

On April 11, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 4613(a)(1)(C) by (a) expanding from 50 to 150 the number of securities in a pilot program for which market makers may quote their actual size by reducing the minimum quotation size requirement for market makers in certain securities listed on the Nasdaq Stock Market (''Nasdaq'') to one normal unit of trading (''Actual Size Rule''), and (b) extending the pilot through December 31, 1997.[3]

On July 10, 1997, the NASD filed Amendment No. 1 to the proposed rule change proposing to extend the pilot through March 27, 1998 and expand it to 150 stocks.[4] On July 17, 1997, the NASD filed with the Commission Amendment No. 2, to correct a technical deficiency in Amendment No. 1.[5] The proposal was noticed for comment on July 24, 1996.[6]

On September 15, 1997, the NASD filed Amendment No. 3,[7] proposing to extend the pilot as previously noted and to expand the pilot by adding a different group of 100 securities to those 50 currently subject to the Actual Size Rule (''First 50'') than was proposed in Amendment Nos. 1 and 2. The NASD believes that this second group of securities will provide a better basis for comparison and economic analysis comparing the Actual Size Rule's effect on pilot and non-pilot Nasdaq securities. In addition, Nasdaq proposes to replace some of securities in the initial 50 stock pilot that are no longer listed on Nasdaq. Amendment No. 3 also proposed extending the pilot through March 27, 1998.

For the reasons discussed below, the Commission has determined to approve the proposed rule change.

II. Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(a)(1)(C) to allow market makers to quote their actual size by reducing the minimum quotation size requirement for market makers in certain securities listed on Nasdaq to one normal unit of trading. As discussed below, the Actual Size Rule presently applies to a group of 50 Nasdaq securities on a pilot basis. The proposed rule change would expand the pilot group to 150 stocks and extend the pilot until March 27, 1998. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

4613. Character of Quotations

(a) Two-Sided quotations

(1) No Change

(A)–(B) No Change

(C) As part of a pilot program implemented by the Nasdaq Stock Market, during the period January 20, 1997 through at least [December 31, 1997] *March 27, 1998,* a registered market maker in a security listed on the Nasdaq Stock Market that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 *or identified by Nasdaq as being otherwise subject to the pilot program as expanded and approved by the Commission,* must display a quotation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] November 18, 1996, the NASD filed with the Commission a proposed rule change to implement the Actual Size Rule on a pilot basis. (SR–NASD–96–43). Among other things, the filing and subsequent amendments proposed to allow market makers to quote in minimum sizes of 100 shares for a three-month pilot Program in the 50 Nasdaq securities subject to mandatory compliance with Exchange Act Rule 11Ac1–4 (''Limit Order Display Rule'') on January 20, 1997. The remaining securities were still subject to the existing minimum quotation display requirements for proprietary quotes. The proposed rule change was intended by the NASD to facilitate the display of customer limit orders in accordance with the Limit Order Display Rule. The Commission approved the pilot through April 18, 1997. Securities Exchange Act Release 38512 (April 15, 1997) 62 FR 19373 (April 21, 1997) (SR–NASD–97–25).

On April 15, 1997, the Commission issued an order granting accelerated approval to a NASD proposed rule change that extended the pilot from April 18, 1997, to July 18, 1997. Securities Exchange Act Release 38512 (April 15, 1997) 62 FR 19373 (April 21, 1997) (SR–NASD–97–25).

On July 18, 1997, the Commission approved a rule change proposed by the NASD to extend the pilot from July 18, 1997 to December 31, 1997. Securities Exchange Act Release No. 38851 (July 18, 1997) 62 FR 39565 (July 23, 1997) (SR–NASD–97–49). The Commission did so to give it additional time to evaluate the economic studies and review the public's comments on the NASD's June 3, 1997, study. In addition, the Commission stated that it believed that extending the pilot would benefit the markets by providing more experience with the Actual Size Rule before a decision is made regarding approval.

[4] See Letter from Robert E. Aber, Vice President and General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 10, 1997.

[5] See Letter from Robert E. Aber, Vice President and General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 17, 1997.

[6] Securities Exchange Act Release No. 38872 (July 24, 1997) 62 FR 40879 (July 30, 1997) (SR–NASD–97–26).

[7] See Letter from Robert E. Aber, Vice President and General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated September 15, 1997.

size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

* * * * *

III. Comments [8]

The Commission received over 350 comment letters.[9] A separate summary of comments has been prepared and is available in the public file. The relevant issues addressed by commenters are discussed in the appropriate sections of this order.

IV. Discussion

On August 29, 1996, the Commission promulgated a new rule, the Limit Order Display Rule [10] and adopted amendments to the Quote Rule,[11] which together are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (collectively, the ''Order Execution Rules'').[12] With respect to securities included on Nasdaq, the Order Execution Rules were implemented according to a phased-in implementation schedule: 50 Nasdaq securities became subject to the rules on June 20, 1997 (''first 50''), 50 more securities became subject to the rules on February 10, 1977 (''second 50''); and an additional 50 securities became subject to the rules on February 24, 1997. The remaining Nasdaq securities were phased in on October 13, 1997.[13]

The SEC's Limit Order Display Rule requires the display of customer limit orders, that: (1) Are priced better than a market maker's quote,[14] or (2) add to the size associated with a market maker's quote when the market maker is at the best price in the market.[15] By virtue of the Limit Order Display Rule, investors now have the ability to directly advertise their trading interest to the marketplace, thereby allowing them to compete with market maker quotations and affect the size of bid-ask spreads.[16] The Order Execution Rules also included amendments to the SEC's Quote Rule, the most significant of which requires a market maker to display in its quote any better priced orders that it places into an electronic communications network (''ECN'') such as SelectNet or Instinet (''ECN Rule''). Alternatively, instead of updating its quote to reflect better priced orders entered into an ECN, a market maker may comply with the display requirements of the ECN Rule through the ECN itself, provided the ECN: (1) Ensures that the best priced orders entered by market makers into the ECN are included in the public quotation; and (2) provides brokers and dealers access to orders entered by market makers into the ECN, so that brokers and dealers who do not subscribe to the ECN can trade with those orders (''ECN Display Alternative'').

In order to facilitate implementation of the SEC's Order Execution Rules and reflect the change in the Nasdaq market that was to be brought about by the implementation of these rules, the Commission approved, on January 10, 1997, a variety of amendments to NASD Rules pertaining to Nasdaq's Small Order Execution System (''SOES'') and the SelectNet Service (''SelectNet'').[17] In particular, one of the NASD Rule changes approved by the Commission provides on a temporary basis that Nasdaq market makers in the first 50 securities subject to the Commission's Limit Order Display Rule are only required to displayed a minimum quotation size of one normal unit of trading when quoting solely for their own proprietary account (*i.e.*, the Actual Size Rule).[18] They can display a greater quotation size if they so choose (or if required by the Limit Order Display Rule). For Nasdaq securities outside of the first 50, the minimum quotation size requirements of 1,000, 500, or 200 shares remained the same.[19]

The NASD submitted the proposal for the Actual Size Rule because it believed, and continues to believe, that the changes in Nasdaq brought about by the Limit Order Display Rule obviates the regulatory justification for minimum quote size requirements because investors now have the capability to display their orders on Nasdaq. The NASD originally imposed the Mandatory Quote Size Requirements to ensure an acceptable level of market liquidity and depth in an environment where Nasdaq market markers were the only market participants who could affect quotation prices. Now that the Limit Order Display Rule permits investors to enter orders as part of the quote, the NASD believes it is appropriate to treat Nasdaq market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements when they are not representing customer orders. In sum, with the successful implementation of the SEC's Order Execution Rules, the NASD believes that Mandatory Quote Size Requirements impose unnecessary regulatory burdens on market makers.

At the same time, the NASD does not believe that implementation of the Actual Size Rule in an environment where limit orders are displayed has or will compromise the quality of the Nasdaq market. First, the NASD believes that display of customer limit orders enhances the depth, liquidity, and stability of the market and contributes to narrower quoted spreads, thereby mitigating the effects of the loss of displayed trading interest, if any, by

[8] In order to give the public additional time to comment on the economic analysis of the pilot that the NASD filed with the Commission on June 3, 1997, the Commission extended the comment period to July 3, 1997. Securities Exchange Act Release No. 38720 (June 5, 1997) 62 FR 38156 (June 11, 1997) (SR–NASD–97–26).

[9] The Commission received comment letters from numerous broker-dealer firms, some of which are market makers and others that are order entry firms. The Commission received comment letters from a large number of individuals who could be identified as SOES traders. The Commission also received comment letters from several academicians, individual investors, and professional associations.

[10] 17 CFR 240.11Ac1–4.

[11] 17 CFR 240.11Ac1–1.

[12] See Securities Exchange Act Release No. 37619A (September 6, 1997) 61 FR 48290 (September 12, 1996) (''Order Execution Rules Adopting Release'').

[13] See, *e.g.*, Securities Exchange Act Release No. 38490 (April 9, 1997); Securities Exchange Act Release No. 38870 (July 24, 1997).

[14] For example, if a market maker's quote in stock ABCD is 10–10¼ (1000×1000) and the market maker receives a customer limit order to buy 200 shares at 10⅛, the market maker must update its quote to 10⅛–10¼ (200×1000).

[15] For example, if a market maker receives a customer limit order to buy 200 shares of ABCD at 10 when its quote in ABCD is 10–10¼ (1000×1000) and the National Best Bid or Offer (''NBBO'') for ABCD is 10–10⅛, the market maker must update its quote to 10–10¼ (1200×1000).

[16] There are eight exceptions to the immediate display requirement of the Limit Order Display Rule: (1) Customer limit orders executed upon receipt; (2) limit orders placed by customers who request that they not be displayed; (3) limit orders for odd-lots; (4) limit orders of block size (10,000 shares or $200,000); (5) limit orders routed to a Nasdaq or exchange system for display; (6) limit orders routed to a qualified electronic communications network for display; (7) limit orders routed to another member for display; and (8) limit orders that are all-or-none orders. See Rule 11Ac1–4(c).

[17] See Actual Size Rule Approval Order.

[18] Thus, the Actual Size Rule does not effect a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 or more shares, it must display a quote size reflecting the size of the customer's order, absent an exception from the Limit Order Display Rule.

[19] In particular, NASD Rule 4613(a)(2) requires each market maker in a Nasdaq issue other than those in the first 50 to enter and maintain two-sided quotations with a minimum size equal or greater than the applicable SOES tier size for the security (e.g., 1000, 500 or 200 shares for Nasdaq National Market issues and 500 or 100 shares for Nasdaq SmallCap Market issues (''Mandatory Quote Size Requirement'').

market makers. Second, it also believes that removing artificial quote size requirements may lead to narrower market spreads, thereby reducing investors' transaction costs. Third, the NASD asserts that permitting market makers to quote in size commensurate with their own freely-determined trading interest will enhance the pricing efficiency of the Nasdaq market and the independence and competitiveness of dealers quotations. Fourth, the NASD suggests that removing quotation size requirements will allowing greater quote size changes, thereby increasing the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not.

Indeed, in its order approving the Actual Size Rule on a pilot basis, the Commission noted that it ''preliminary believes that the proposal will not adversely affect market quality and liquidity'' [20] and that it ''believes there are substantial reasons * * * to expect that reducing market makers' proprietary quotation size requirements in light of the shift to a more order-driven market would be beneficial to investors.'' [21] In addition, the Commission stated that, ''based on its experience with the markets and discussions with market participants, [it] believes that decreasing the required quote size will not result in a reduction in liquidity that will hurt investors.''[22]

Nevertheless, in light of concerns raised by commentators opposed to the Actual Size Rule regarding the potential adverse impacts of the rule on market liquidity and volatility, the Commission originally determined to approve the rule on a three-month pilot basis to afford to the Commission and the NASD an opportunity to gain practical experience with the rule and evaluate its effects. The factors identified by the Commission to be considered in this evaluation include, among others, the impact of reduced quotation sizes on liquidity, volatility and quotation spreads.[23]

As detailed below, the NASD has concluded that implementation of the SEC's Order Execution Rules has significantly improve the quality of the Nasdaq market by creating a market structure where customer limit orders provide liquidity and effectively compete with market maker quotations. In this type of environment, the NASD believes that regulatory necessity for the Mandatory Quote Size Requirements no longer exists. Nonetheless, the NASD determined to extend and broaden the pilot to gain greater experience with voluntary quotation size. The NASD is proposing the pilot be expanded to include an additional 100 securities and extended until March 27, 1998.

To evaluate that pilot, the NASD's Economic Research Department conducted an economic analysis of the pilot's operation and of the impact of the Commission's Order Handling Rules.[24] The analyses thus far indicates three general findings concerning implementation of the SEC's Order Execution Rules and the Actual Size Rule: (1) The SEC's Order Execution Rules have dramatically improved the quality of the Nasdaq market, particularly with respect to the size of spreads: (2) among those securities subject to the SEC's Order Execution Rules, there is no appreciable difference in market quality between those securities subject to the Actual Size Rule and those securities subject to Mandatory Quote Size Requirements;[25] and (3) implementation of the Actual Size Rule has not resulted in any significant diminution of the ability of investors to receive automated executions through SOES, SelectNet, or proprietary systems operated by broker-dealers. Accordingly, as is the case with 100-share minimum quotation size requirements applicable to exchange specialists in order-driven markets, the NASD believes that the Actual Size Rule has not harmed investors or the quality of the Nasdaq market.

In the June Study, the NASD found that pilot and non-pilot stocks experienced virtually the same improvements in market quality since the implementation of the Order Handling Rules. Specifically, the NASD found that investors in pilot stocks continued to have substantial and reasonable access to market maker capital through both SOES and market makers' proprietary automatic execution systems.[26]

A. Implementation of the SEC's Order Execution Rules Has Resulted in Significant Benefits to Investors and Enhanced the Quality of the Nasdaq Market

NASD Economic Research evaluated measures of market quality in four main areas: spread, volatility, quoted depth, and liquidity. The Pilot Stocks and the second tranche of 50 stocks to become subject to the Order Handling Rules both include 40 stocks selected from the first through fifth deciles of the 1,000 most active Nasdaq stocks. Therefore, those from the Pilot Stocks (''First 40'') are reasonable peers of those from the February 10 tranche (''Second 40'').[27] The NASD believes that, as shown below, the similar performance of the First 40 and Second 40 indicates that the Actual Size Rule did not impair the markets for these securities.

1. Spreads [28]

The NASD looked at mean spreads for the First and Second 40 and found that mean spreads declined by about $0.12 for both the First 40 and the Second 40, or by about 33%. For the First 40, the mean spread declined from $0.41 to $0.28, and for the Second 40 the mean spread declined from $0.36 to $0.24. The results in the NASD's study indicate an equivalent spread effect across the two groups. These results provide no statistically significant evidence of a differential change in quoted spreads between the First 40 and Second 40. Therefore, the NASD believes there is no effect on quoted spreads associated with removal of the 1,000-Share Quote Size Rule.

[20] *See* Actual Size Approval Order, 62 FR at 2425.

[21] *Id.* 62 FR at 2423.

[22] *Id.* 62 FR at 2424.

[23] *See* 62 FR 2415 at 2425.

[24] On June 3, 1997, the NASD published an economic analysis entitled ''Effects of the Removal of Minimum Sizes for Proprietary Quotes in the Nasdaq Stock Market, Inc.'' (June Study). On September 10, 1997, the NASD published a related study entitled ''Implementation of the SEC Order Handling Rules'' (September Study). Both studies are available to the public at Nasdaq's World Wide Web sit at ''http://www.nasdaq.com''.

[25] The first 50 securities includes Nasdaq's top ten issues by dollar volume plus 40 issues chosen from Nasdaq's top 500 issues: 8 ranked between 11 and 100; 8 ranked between 101 and 200; 8 ranked between 201 and 300; 8 ranked between 301 and 400; 8 ranked between 401 and 500. The second 50 securities include the ten Nasdaq stocks and ranked between 11 and 20 by dollar volume plus 40 stocks chosen from Nasdaq's top 500 stocks in the same manner explained above. The ten largest Nasdaq stocks in the first 50 have no comparable peer group among Nasdaq stocks and the next ten largest Nasdaq stocks (*i.e.*, Nasdaq stocks ranked 11–20 in size) included in the second 50 are also not comparable to the ''bottom 40'' of either the first 50 or second 50. The Nasdaq stocks ranked 1–20, therefore, have been excluded from the analysis comparing the first 50 and the second 50. Accordingly, the ''first forty'' stocks are those stocks that are the ''bottom 40'' within the first 50 stocks and the ''second forty'' stocks are those stocks that are the ''bottom 40'' within the second 50 stocks.

[26] June Study at 2.

[27] The remaining 10 stocks in the first tranche were roughly the top 10 stocks (''First 10''), and the remaining 10 from the second tranche were roughly stocks 11 through 20 (''Second 10''). Consistent with the Commission's request for a ''matched pairs analysis,'' the First 10 and Second 10 are excluded from this analysis, because these groups do not demonstrate similar trading characteristics and hence cannot be properly compared. See Actual Size Approval Order, 62 FR at 2425. Indeed, inclusion of the First 10 and Second 10 would likely produce skewed results. The market quality improvements induced by the Order Handling Rules, however, are apparent in both the First and Second 10.

[28] See also Summary of Comments, Section B.6.

2. Volatility [29]

The NASD looked at the volatility of the First and Second 40 and found that volatility slightly increased following the imposition of the Order Handling Rules for both the First 40 and the Second 40. For the First 40, average volatility rose from 1.16% to 1.25%, an increase of 7.6%. For the Second 40, volatility rose from 0.98% to 1.24%. It also found that the increase in volatility does not, however, appear to be attributable to the Order Handling Rules, because volatility also increased for other stocks in the top 500 that had not become subject to the Order Handling Rules during the sample period.

On the surface, the results indicate a general increase in volatility, in particular for the Second 40 stock group. In order to correct for stock-specific characteristics such as price, volume, and interday volatility, the NASD used a multivariate regression analysis. The multivariate regression results show that the differential increase in volatility for the Second 40 can be attributed to volume, price, and interday volatility.[30] In the presence of these factors, the differential volatility effect on the Second 40 is statistically insignificant. The NASD found that these results demonstrate that there is no statistically significant evidence of a differential change in intraday volatility between the First 40 and Second 40.

3. Quoted Depth Measures

The NASD examined the impact of the Actual Size Rule on quoted depth. First the NASD studied the percentage change in number of market makers and the percentage change in number of market makers at the market maker inside market. After performing a regression analysis, it found no statistically significant difference between the First 40 and the Second 40.[31] For both measures, the marginal impact of the removal of the 1,000-Share Quote Size Rule is negligible. The NASD also studied the distribution of the sizes of all dealer quote updates. It found that quote updates for 100 and 1,000 share stocks were similar for the First 40 and the Second 40.[32]

Based on this evidence, the NASD concluded that the changes in quoting behavior induced by the implementation of the Order Handling Rules have been qualitatively similar for both the First 40 and Second 40.

4. Liquidity [33]

The NASD looked at effective depth in order to measure liquidity. Similar to the sections on spread, volatility, and quoted depth measures above, the change in normalized effective depth [34] after implementation of the Order Handling Rules was calculated for the First 40 and Second 40. Effective depth is calculated for each Bid-Ask Midpoint (''BAM'') movement category, and mean values across all stocks and days in the sample for each category were calculated. The NASD applied multivariate regression analysis and found that there is no statistically significant association between the removal of the 1,000-Share Quote Size Rule and any change in normalized effective depth.

After accounting for changes in stock price, trading volume, and interday volatility, the NASD found no evidence of a statistically significant association between the removal of the regulatory minimum size for proprietary quotes and a change in liquidity.

B. Implementation of the Actual Size Rule Has Not Resulted in any Diminution in the Ability of Investors To Receive Automated Executions Through SOES, SelectNet, or Other Proprietary Systems Operated by Broker Dealers [35]

For some market participants, Nasdaq's SOES system is the primary means they use to obtain executions. Use of the SOES system has increased over the past few years. SOES executions accounted for 8.3% of all Nasdaq share volume in 1996, up from 5.6% in 1995 and 3.0% in 1993. Much of the SOES activity is derived from day traders. The majority of SOES orders are for 1,000 shares, the maximum tier size for stocks.

As detailed above, the SOES system was changed on January 20 to execute orders based on market maker quoted size. The NASD examined SOES activity to determine if the removal of the 1,000-Share Quote Size Rule diminished the ability of the SOES system to provide executions.

First, the NASD examined whether the incidence of ECNs alone at the inside market was different for the First 40 and Second 40 stocks. When an ECN is alone at the inside, SOES is unavailable. The NASD found that ECNs were alone at the inside market only 9.2% of the time after implementation of the Order Handling Rules for the First 40 stocks, and only 9.4% of the time for the Second 40.[36] Second, the NASD examined how often all market makers at the inside market were quoting a size of 100. The NASD found that this occurred only 1.6% of the time in the First 40 stocks and only 0.8% of the time in the Second 40.

Both measures provide evidence from which the NASD concluded that times during which SOES is unavailable are uncommon and that the degree of any degradation of the effectiveness of SOES due to the Actual Size Rule is statistically insignificant. Moreover, the NASD concluded that only certain measures of SOES performance (*e.g.*, multiple price SOES executions, average SOES trade size) have experienced any marginal change between the First 40 and the Second 40.[37] To the extent a marginal difference exists, the NASD found it to be slight and therefore concluded that the removal of the 1,000-Share Quote Size Rule has had no meaningful effect on the SOES system's ability to provide reasonable access to executions.

C. Response to Electronic Traders Association (''ETA'') Study [38]

The ETA is an association representing SOES order entry firms whose customers use SOES for day trading. The ETA conducted its own study of the Actual Size Rule. Its study found that SOES orders in pilot stocks are less likely to be executed than for non-pilot stocks; that the mean time between entry and execution of a SOES order is longer for pilot than for non-pilot stocks; and that the mean price concession is larger for pilot stocks than for non-pilot stocks.

The NASD examined the ETA study and found it seriously flawed. The NASD noted that the ETA study is based on a small sample of data from three of

[29] See also Summary of Comments, Section B.5.

[30] June Study at 31.

[31] June Study at 35 and Table B.5 of Appendix B.

[32] June Study at 34.

[33] See also Summary of Comments, Section B.4.

[34] Normalized effective depth is defined as the dollar volume required to move the BAM one percentage point, calculated for BAM moves of the following percentage movements; all movements, 0.5%, 1%, 1.5%, 2%, 2.5%, and 3%.

[35] See also Summary of Comments, Section B.9.

[36] The NASD also found that between August 11 and 29, 1997, SOES access was restricted to 100 shares only 1.2% of the time. That is, only 1.2% of the trading day was it the case that there was no market maker at the inside quoting an amount greater than 100 shares. September Study at 4.

[37] See June Study at 42–46. For example, for the First 40, average SOES trade size fell by 15.0% and by 6.0% for the Second 40. It is important to note, however, that given that the mean price of stocks in the First 40 was roughly $35, the average SOES trade size of 753 shares represents a trade of approximately $26,000. Compared to most retail activity, the average SOES trade in the First 40 continues to be quite large. Given that the average SOES trade size is still large and that SOES continues to account for a substantial proportion of Nasdaq dollar volume, it is unlikely that the decrease in average trade size of SOES executions has negatively impacted the ability of the SOES system to provide executions for retail-size orders.

[38] See also Summary of Comments, Section B. 10.

the 425 firms that enter orders through SOES; the ETA does not distinguish between SOES orders that were actively canceled by the order entry firm and those that were returned to the order entry firm; and the ETA report does not account for considerable differences in the average trading characteristics (*e.g.*, price, volume) between pilot and non-pilot stocks. The NASD found that the ETA study provides ''no basis to conclude that the Actual Size Rule has adversely affected the ability of the SOES system to provide investors with reasonable access to market maker capital.'' [39]

D. The Pilot Justifies an Expansion and Extension of the Actual Size Rule

While some market participants may maintain that the Actual Size Rule should be abandoned because it has not had a demonstrably positive market impact, the NASD believes, in light of the pilot experience and its economic research, that the Rule should be retained. The NASD believes it eliminates an unnecessary regulatory requirement and, moreover, it has not had any adverse market impacts. In particular, with respect to the first 50 securities, the NASD believes that competitive forces in the marketplace, be they the result of displaying customer limit orders, ECN quote display, or market maker competition for order flow, have driven the Nasdaq market to perform at least as well, if not better, than if the artificial 1,000 share minimum quotation size requirement was in place.[40] As a result, given the conclusion that the market performs the same with or without the Actual Size Rule, the NASD believes it is far preferable for the protection of investors and the efficiency of the capital formation process to promote a regulatory environment for Nasdaq that achieves its results through aggressive competition rather than artificial regulatory fiat. In sum, in light of the performance of the first 50 securities, the NASD believes there is no regulatory basis to justify the retention of artificial quotation size requirements for Nasdaq market makers.

The NASD is proposing to expand the pilot to 150 stocks in order to provide a better sample of stocks to use in studying the effects of the Actual Size Rule upon the Nasdaq Market. Further, to address criticism by several commentators that the group of stocks making up the pilot (both currently and as the NASD initially proposed to expand it) is not an ideal sample of Nasdaq stocks upon which to base a decision on the future of the Actual Size Rule, the NASD altered the group of 100 stocks it is proposing to add to the current pilot.

The NASD has selected stocks that are representative of the entire Nasdaq market by sampling across dollar volume categories. Within dollar volume categories, it sought variation across SOES tier sizes of 1,000 and 500 shares. The NASD then randomly chose 100 stocks.[41]

V. Conclusion

The Commission approved the Actual Size Rule on a pilot basis so that the effects of the rule could be assessed. In doing so, the Commission stated that it believed that a reduction in the quotation size requirement could reduce the risks that market makers must take, produce accurate and informative quotations, and encourage market makers to maintain competitive prices even in the changing market conditions resulting from the Order Execution Rules.

As discussed above, the NASD has produced an extensive economic analysis of the pilot, and several commentators have provided their own economic analysis as well. These economic analyses have proved useful in assessing the pilot Program's impact on the Nasdaq market. Although the economic studies arrive at conflicting results on the value of the Actual Size Rule, the Commission preliminarily believes that the data indicates that the pilot has not resulted in harm to the Nasdaq market. Indeed, as discussed above, the Actual Size Rule appears to be a reasonable means to provide market making obligations that reflect the new market dynamics produced by the Order Execution Rules. Nevertheless, as several commenters noted, the pilot Program was limited to 50 out of over 5,000 securities. Moreover, the Commission had decided that it would be appropriate to gather further data before reaching a final decision as to whether or not to extend the Actual Size Rule to the entire Nasdaq market. The Commission notes that there has been some disagreement as to how to interpret the data the NASD and others have published concerning the pilot Program. This is due in part to the limited nature of the pilot Program and the need for commenters to extrapolate data concerning these 50 securities to the entire Nasdaq market. These problems can be reduced if the pilot is expanded as proposed. An extension and expansion of the pilot will provide the Commission, the NASD, and market participants with additional data and time to study the Order Execution Rules' effects on the Nasdaq market. Based upon the expanded pilot, the Commission will be in a better position to evaluate the impact of the Actual Size Rule upon the Nasdaq market.

The NASD initially proposed to expand the pilot Program by adding the 100 securities that were next to be phased-in under the Order Execution Rules earlier this year. Although the first 50 securities were chosen to provide a broad cross section of the most liquid Nasdaq securities,[42] the NASD filed Amendment No. 3 to select an additional 110 securities [43] from an enhanced sample more representative of the entire Nasdaq market. This was done in response to a number of the comment letters which suggested that the First 50 securities were not representative of the Nasdaq Market. Specifically, it was suggested that, because all 30 of the largest Nasdaq stocks were subject to the 100 share minimum, it was impossible to gauge the Actual Size Rule's effect on large Nasdaq stocks, since there were no sufficiently large non-pilot stocks with which to compare.

These additional 100 securities were chosen from those domestic Nasdaq National Market (''NNM'') stocks with a

[39] September study at 3.

[40] Some market participants have asserted that the lack of difference in performance between the First 40 and the Second 40 is attributable to the operation of several features of SOES. Specifically, these market participants claim that the SOES Auto-Refresh Feature, which refreshes a market maker quote to the applicable SOES tier size once its quote has been completely decremented, along with the ''No Decrementation'' and ''Supplemental Size'' features of SOES, artificially increase the number of 1000-share quotes in the first 50 securities. The ''No Decrementation'' feature of SOES allows a market maker to provide that its quote shall not be decremented after the execution of SOES orders. To use this feature, a market maker's quote size must be equal to the applicable SOES tier size. The ''Supplemental Size'' feature of SOES allows a market maker to establish a ''supplemental size'' that is used to automatically replenish a market maker's quote once it has been completely decremented. When a market maker's quote is replenished from the supplemental size, it is replenished to 1000 shares. In order to use this feature, a market maker must initially enter a quote size equal to or greater than the applicable SOES tier size. The NASD notes that market maker's use of each of these system features is completely voluntary and they are available for all Nasdaq securities. Accordingly, the NASD believes it would be inaccurate to assert that these SOES features have obfuscated the impact of the Actual Size Rule. *Id.* 62 FR at 19371.

[41] Ten additional stocks were chosen to make up for delistings within the first 50 stocks in the pilot and as reserves in case other pilot stocks delist. Only domestic common stocks were chosen.

[42] Actual Size Approval Order, 62 FR 2415.

[43] As discussed above, ten additional stocks were chosen to replace those pilot stocks that have already delisted or that may delist in the future. The proposal still calls for the pilot to expand from 50 to 150 stocks.

SOES tier size of either 1,000 or 500 shares that were not included in the First 50. These stocks were ranked by average (mean) daily dollar volume over the first seven months of 1997, and then divided into deciles, each containing approximately the same number of stocks. Eleven stocks were chosen at random from each decile, for a total of 110 stocks. Ten extra stocks were chosen to make up for four stocks of the First 50 that no longer trade on Nasdaq, and as reserves should any delist in the interim. This ensures that a total of 150 stocks will be ultimately subject to the Actual Size Rule is approved. The chosen stocks will be identified in a fax or Notice to Members published after SEC approval of the proposed rule change.

The Commission believes that the proposed amendment is consistent with the Exchange Act because it will provide for a more representative group of securities under an expanded Actual Size Rule pilot. The next 100 stocks include securities with significantly different trading volumes, so the NASD will be better able to assess the impact of the Actual Size Rule on the full panoply of Nasdaq stocks. This will further the evaluation of the Actual Size Rule and will assist the SEC in its determination as to whether to expand the pilot ultimately to all Nasdaq securities or to end it. In addition, Amendment No. 3 responds to the commentators who expressed concern that an expansion of the pilot to 150 stocks would capture stocks that account for a large majority of Nasdaq trading volume and SOES activity, and thus act as a *de facto* implementation of the Actual Size Rule. Regardless of the validity of this concern, the modified additional 100 stocks no longer contain only the next 100 most active stocks.

The Commission requests that the NASD continue to evaluate the effects of the reduction in the minimum quotation size for those Nasdaq stocks included in the pilot. Specifically, the NASD should continue its analysis of. (1) The number and composition of the market makers in each of the 50 securities, and any change over time; (2) the average aggregate dealer and inside spread by stock over time; (3) the average spread for each market maker by stock; (4) the average depth by market maker (including limit orders), and any change in the depth over time; (5) the fraction of volume executed by a market maker who is at the inside quote per stock; and (6) a measure of volume required to move the price of each security one increment (to determine the overall liquidity and volatility in the market for each stock). Finally, the NASD should compare data for each decile of securities, focusing particular attention on relatively active versus inactive securities that are among the lower tier of NNM securities, by daily dollar trading volume.

VI. 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 Amendment No. 3 to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–26 and should be submitted by November 26, 1997.

VII. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change

For the reasons discussed above, the Commission finds that the NASD's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association and has determined to approve the expansion of the pilot to 150 Nasdaq securities and to extend the pilot through March 27, 1998.[44]

The Commission also is approving Amendment No. 3 on an accelerated basis. In Amendment No. 3, the NASD has addressed criticism by several commentators who believe that the current pilot is not well designed to study effects of the Actual Size Rule. These commentators believe that the 50 stock pilot is not sufficiently representative of the entire Nasdaq Market and cannot form the basis for an adequate economic study. In particular, the commenters stated that most of the 20 largest Nasdaq stocks are subject to Actual Size Rule and that very few small stocks are subject to rule, and thus it is impossible to gauge the rule's effect on the largest and smallest stocks without similar groups of nonpilot stocks to use in comparison.

The Commission finds that the 150 stock pilot the NASD is now proposing is a reasonable sampling of the Nasdaq market, calculated to allow the NASD and others to study the effects of the Actual Size Rule. The Commission also believes that approving Amendment No. 3 to the proposed rule change will provide it with additional data for use in determining whether to expand the Actual Size Rule to cover the entire Nasdaq market or to take another course of action. The Commission finds good cause in approving the extension element of Amendment No. 3 to the proposed rule change on an accelerated basis in order to give the NASD sufficient time to collect data on the expanded pilot, analyze that data, and publish a report on its findings. By allowing the NASD to begin its analysis quickly so that it may publish its findings promptly, commentators will have more time to examine the study and the Commission will be in a better position to make a determination on the future of the Actual Size Rule in a timely manner. An additional three months is designed to provide the Commission and the public time to fully consider the results of the NASD's economic study and is merely a technical change to prevent a rushed study and comment period. The Commission therefore finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof.

Accordingly, the Commission believes that the proposed rule change (SR–NASD–97–26) is consistent with Sections 15A(b)(6) and (b)(9) of the Exchange Act[45] and

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[46] that the proposed rule change, SR–NASD–97–26, be and hereby is approved through March 28, 1998.

[44] The Commission also has determined to approve the replacement of those securities in the pilot that are no longer listed on Nasdaq with others from the list of securities provided by the NASD.

[45] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule likely will produce more accurate and informative quotations and encourage market makers to maintain competitive prices. It will also provide the Commission with additional data, enabling it to evaluate better the impact of the Actual Size Rule on the Nasdaq market and market participants. Since the Commission believes that the data discussed above indicates that the pilot has not resulted in harm to the Nasdaq market thus far, the net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[46] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29296 Filed 11–4–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S7 covers the Deputy Commissioner for Human Resources. Notice is given that Chapter S7 is being amended throughout to reflect organizational and functional changes. Notice is further given to reflect that Subchapter S7C, the Office of Labor-Management Relations is being retitled as the Office of Labor-Management and Employee Relations (S7C). The changes are as follows:

Section S7.10 The Office of the Deputy Commissioner, Human Resources—(Organization)

Retitle:

E. The Office of Labor-Management Relations (S7C) to the Office of Labor-Management and Employee Relations (S7C).

Section S7.20 The Office of the Deputy Commissioner, Human Resources—(Functions):

Amend to read as follows:

A. The Deputy Commissioner, Human Resources (DCHR) (S7) is directly responsible to the Commissioner for carrying out the ODCHR mission and providing general supervision to major components of ODCHR as well as guidance, support and technical assistance to the SSA regional personnel administration operation and policy and direct service support to the Agency's executive personnel activities and other high level special categories.

C. The Immediate Office of the Deputy Commissioner, Human Resources (S7A).

Change to read as follows:

1. Provides the Deputy Commissioner and the Assistant Deputy Commissioner with staff assistance on the full range of their responsibilities.

2. Develops and implements all SSA policies and activities relating to the Agency's executive level personnel management program.

3. Recruits for and places individuals in positions in the Senior Executive Service (SES) in accordance with OPM regulations.

4. Provides staff support to the Executive Resources Board in administering a systematic program to manage SSA's executive and professional resources and ensuring the appropriate selection of candidates to participate in official executive development programs.

5. Provides staff support to the Performance Review Board in reviewing performance plans and subsequent appraisals of career and non-career executives in SES and employees in equivalent level positions.

D. The Office of Personnel (OPE) (S7B).

Delete from the fourth sentence ''executive personnel services.''

Retitle:

E. The Office of Labor-Management Relations (S7C) to the Office of Labor-Management and Employee Relations (S7C).

Retitle:

Existing Subchapter S7C, ''The Office of Labor-Management Relations'' (S7C) to ''The Office of Labor-Management and Employee Relations'' (S7C). Change all references to ''The Office of Labor-Management Relations'' to ''The Office of Labor-Management and Employee Relations'' and all references to ''OLMR'' to''OLMER''.

Section S7B.00 The Office of Personnel—(Mission)

Delete from the first sentence ''executive personnel services.''

Section S7B.20 The Office of Personnel—(Functions)

D. The Project Management Staff (S7BH).

Amend as follows:

4. Develops and implements SSA-wide program of Personnel security. Directs personnel security activities having SSA-wide significance.

5. Designs national policies for the SSA Drug-Free Workplace Program. Manages the day-to-day operations of the Agency's drug program.

6. Directs the development and operation of SSA's Workers' Compensation services program. Provides assistance to employees regarding claims for loss of wages, settlement awards, notices of injury and required medical reports.

F. The Center for Personnel Operations (S7BK).

Delete the following from Item 1, sentence 1: ''including policies and guidelines for SSA administration of the Senior Executive Service (SES).''

Change to read as follows:

2. Develops and implements SSA-wide programs of position classification and position management within SSA headquarters. Directs position classification and position management activities having SSA-wide significance.

Add a last sentence to Item 8:

Serves as the focal point for unemployment compensation activities.

Delete Items 10 through 13.

Section S7C.00 The Office of Labor-Management and Employee Relations—(Mission)

Amend to read as follows:

The Office of Labor-Management and Employee Relations (OLMER) provides overall management of an SSA-wide program of labor-management and employee relations. The mission includes the development and evaluation of the programs and the formulation of SSA-wide labor-management relations policy. The office provides services to SSA components on labor relations issues and on employee relations issues relating to disciplinary and adverse actions and employee grievances.

Section S7C.20 The Office of Labor-Management and Employee Relations—(Functions):

Amend to read as follows:

C. The Immediate Office of the Director, Office of Labor-Management and Employee Relations (S7C) provides the Director and the Human Resources Manager with staff assistance on the full range of their responsibilities. The functions of the office include the following:

1. The formulation and promulgation of Agency policy, guidance and direction for exercising management's rights and discharging the Agency's obligations under labor and employee relations law, executive orders, regulation, and negotiated agreements. The research of policy questions in these areas for management at various levels of the organization. Coordinating with the Office of the General Counsel (OGC) on matters impacting on law or requiring legal opinions.

2. The negotiation, implementation and administration of master agreements nationwide, which involves pre-negotiated activities, team preparation, advisory services and problem resolution.

3. Negotiating agreements on behalf of the Agency with unions having exclusive recognition at the level of the Agency, advising and assisting management representatives in negotiating labor-management

[47] 17 CFR 200.30–3(a)(12).

agreements at other levels of the Agency.

4. Representing management in labor and employee relations cases that establish or impact on national level labor-management policy before arbitrators or such administrative bodies as the Merit Systems Protection Board, the Federal Labor Relations Authority and the Federal Service Impasses Panel. Administering and maintaining a panel of arbitrators, who can be assigned to rule on grievances under the negotiated agreements.

5. Providing Agency-head review of labor-management agreements for compliance with law, rule and regulation, coordinating with cognizant offices as appropriate and approving or disapproving those agreements pursuant to 5 U.S.C. 71 (the Federal Service Labor-Management Relations Statute).

6. Coordinating with components and organizations planning to design, develop, modify or implement plans, policies or operations that impact on employees and providing advice to ensure that labor-management implications and obligations are identified, incorporated and discharged.

7. The development, implementation and evaluation of SSA policies and programs involving disciplinary actions, performance-based actions, grievances, appeals and serious misconduct cases. Providing advise to SSA management on nonbargaining unit grievances.

8. Providing training, advice and direction to supervisors, managers and other management personnel in SSA components on the proper interpretation and application of negotiated agreements, 5 U.S.C. 71, and employee relations law and regulation.

9. Development and distribution of manuals, guides and written instructions or aids to assist management personnel in developing the knowledge and skills necessary to properly administer the Agency's labor and employee relations rights and obligations.

10. Working with managers, labor organizations and union officials to develop and maintain plans, programs and procedures necessary to institutionalize sound labor-management relations and more effective and efficient dealings between the parties. Providing support to SSA partnership activities.

11. Serving as the central depository/clearinghouse for all labor-management agreements (including partnership agreements), grievances, final grievance or arbitrator decisions and labor or employee relations cases and decisions before administrative bodies involving the Agency. Maintaining databases and technical references, as necessary, to monitor emerging trends and to research and analyze agreements and case decisions in order to plan and prepare to represent the interest of the Agency in labor and employee relations.

12. Serving as a liaison with other Federal government agencies to identify emerging trends in labor and employee relations, representing the Agency on interagency committees, workgroups and panels on labor and employee relations matters and helping ensure that the interests of the Agency are fully considered in developing government-wide labor and employee relations policy.

Section S7E.20 The Office of Civil Rights and Equal Opportunity—(Functions)

Amend as follows:

1. Directs implementation and evaluation of the SSA Equal Employment Opportunity Discrimination Complaint Program for both Headquarters and the field. Provides advice, guidance and assistance to SSA officials concerning the discrimination complaint program area and related management matters.

2. Provides leadership, guidance and direction in implementing SSA policies, regulations and procedures pertaining to the timely, accurate, fair and impartial processing of discrimination complaints throughout the Headquarters and field organizations. Formulates SSA policies, regulations and procedures pertaining to the EEO discrimination process.

3. Provides overall direction regarding all aspects of SSA's complaint system in order to ensure uniformity in complaint handling, resolution and disposition. Directs the preparation of guidelines on all complaint matters.

4. Receives and conducts inquiries and attempts resolution of informal complaints of discrimination. Advises complainants of their rights regarding the discrimination complaints process and other related processes.

5. Receives and acknowledges formal complaints of discrimination and makes a determination whether to accept or dismiss the complaint/issue(s). Issues decisions on certification of class complaints. Conducts investigations and oversees the process.

6. Prepares final Agency decisions on complaints of discrimination against SSA. Ensures compliance with any corrective or remedial action directed by SSA, Equal Employment Opportunity Commission (EEOC) or any other agency having authority to so direct.

7. Develops litigation information and documentation for the Office of the General Counsel and the United States Attorney's Office in employment discrimination court suits filed against SSA. Prepares the Agency's brief for complaints appealed to EEOC. Also, responds to interrogatories submitted in class complaints. Analyzes new and recent court decisions, public laws and Federal regulations for their impact on SSA complaint processing.

8. Directs special projects and studies of the various aspects of SSA's nationwide discrimination complaint process to evaluate the overall effectiveness of the equal opportunity program. Directs the analysis of trends observed during projects and studies and implements new procedures as required.

9. Provides the authoritative interpretations on legal, regulatory and technical discrimination complaint matters to SSA management nationwide.

10. Implements policies, regulations and affirmative action programs and develops and implements special needs placement programs related to the Disabled program.

11. Directs the development and monitoring of SSA's equal opportunity and civil rights programs.

12. Provides leadership, direction and guidance throughout the Headquarters and field organizations in the formulating and implementing of SSA policies, regulations and procedures pertaining to the development of sound affirmative civil rights and equal opportunity programs. Approves, on behalf of the Deputy Commissioner, affirmative employment program plans prepared by components and regions. Develops the overall SSA affirmative employment program plan.

13. Develops guidelines and procedures for effective affirmative employment program planning and monitoring throughout SSA. Develops recommendations on affirmative employment policy and operations for the Director, OCREO.

14. Reviews non-SSA equal opportunity and civil rights issuances, EEOC and court decisions for applicability to SSA policy statements. Develops instructions and guidelines to transmit or implement equal opportunity and civil rights policy decisions in SSA.

15. Conducts and coordinates studies or analyses of SSA's human resources and operating policies and procedures to assess their equal opportunity and civil rights impact.

16. Directs the development and maintenance of minority and disabled persons employment information system(s) for SSA employees and applicants for employment.

17. Develops and tracks SSA's major initiatives that relate to civil rights and equal opportunity and oversees their implementation.

18. Plans, directs and implements special programs for all minorities, women and employees with disabilities.

19. Develops, implements, monitors and evaluates special recruitment plans, programs and projects for targeted equal opportunity groups.

20. Develops, monitors and evaluates SSA compliance program(s) under civil rights statutes.

Section S7G.10 The Office of Training—(Organization)

Abolish:

C. The Administrative Staff (S7GC).

D. The Human Resources Planning Staff (S7GE).

E. The Center for Technology and Employee Development (S7GG).

F. The Center for Program Initiatives and Management Education (S7GH).

G. The Center for Educational Research and Evaluation (S7GJ).

Section S7G.20 The Office of Training—(Functions)

Abolish in their entirety:

C. The Administrative Staff (S7GC).

D. The Human Resources Planning Staff (S7GE).

E. The Center for Technology and Employee Development (S7GG).

F. The Center for Program Initiatives and Management Education (S7GH).

G. The Center for Educational Research and Evaluation (S7GJ).

Add:

B. The Immediate Office of the Director, Office of Training (OT) (S7G) provides the Director with staff assistance on the full range of his/her responsibilities.

1. The immediate office of the Director, OT, provides the Director with administrative and technical staff assistance on the full range of his/her responsibilities.

2. The Office of the Director's immediate administrative and technical staff plan direct, coordinate and administer the activities relative to developing and executing budget activities; represent OT on interagency human resource/training groups; interpret OPM training policies, purchase of training policies, and promulgate SSA training policy; maintain the Administration Instructions Manual System related to training policy; act as OT liaison with Personnel on such personnel matters as classification, position management, staffing and recruitment; plan, formulate and implement SSA training policies; and provide overall support and coordination to the training function. Coordinate travel, training and conference attendance for office staff.

3. The Director's immediate staff is also responsible for the development and updating of SSA's Training Plan. This plan provides for the training of SSA employees and for providing the means for employee development beyond training.

4. Directs, designs, develops, implements, conducts and evaluates all SSA supervisory, managerial and executive-level training development activities.

5. Has Agencywide responsibility for common needs and general skills training, including related developmental activities for nonsupervisory personnel.

6. Directs, designs, develops and implements Agency-level career development programs from the highest executive levels (SES) to programs for nonmanagement employees.

7. Directs, designs, develops and implements training to support Agencywide computer software acquisitions, and administrative initiatives.

8. Conducts ongoing research to identify the best approaches to training in the areas of management, general and systems-support training and in the area of career development programs.

9. Conducts ongoing research to identify automated technologies (e.g., Interactive Video Teletraining, multi-media, computer-based training, internet and intranet, etc.) and instructional methodologies for application to training throughout SSA.

10. Directs, designs, develops and manages SSA's Interactive Video Teletraining System.

11. Monitors and evaluates Agency training and developmental activities to ensure desired results and effects through the SSA Training Evaluation System.

12. Manages SSA's National Training Center, Individualized Learning Center and the Training Information Center.

13. Provides office automation support and consultant services for all of OT.

14. Directs the design, development, implementation and evaluation of disability related programmatic/technical training to meet the needs of SSA direct-service employees and components Agencywide, as well as programmatic employees in the States' Disability Determination Services, including entry-level training. This includes support for all Agencywide disability reengineering initiatives.

15. Directs the design, development, implementation and evaluation of Title II Retirement, Survivors and Auxiliary, and Medicare related programmatic/technical training to meet the needs of SSA direct-service employees and components Agencywide, including entry-level and advanced programs, programmatic systems training.

16. Directs the design, development, implementation and evaluation of Title XVI Supplemental Security Income related programmatic/technical training to meet the needs of SSA direct-service employees and components Agencywide, including entry-level and advanced programs, programmatic systems training.

17. Develops guidelines and procedures to determine technical/programmatic training needs in all areas of responsibility, and reviews technical training programs Agencywide.

18. Initiates independent studies and analyses to anticipate and identify new or changing programmatic or other training approaches in a dynamic organizational environment, and designs, develops and implements programs geared to new training delivery technologies and approaches.

Dated: October 20, 1997.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 97–29258 Filed 11–4–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 7]

Railroad Safety Advisory Committee (''RSAC''); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities and new tasks accepted.

SUMMARY: FRA is updating its announcement of RSAC's working group activities, last published in early August of this year, to reflect additional working group activities, and new tasks presented and accepted during the RSACs September 30th meeting.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, FRA, 400 7th Street, S.W. Washington, D.C. 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards Program Development, FRA 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3309, or Lisa Levine,

Office of Chief Counsel, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 632–3189.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports. See 62 FR 41992, August 4, 1997. The most recent full RSAC meeting was held September 30, 1997.

Since its first meeting in April of 1996, the RSAC has been presented with, and accepted, fourteen tasks. Detailed status and contact information for each of the tasks currently pending within the RSAC is provided below (new tasks appear in bold):

• (1) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213) (Task accepted April 2, 1996. Working Group established. Six meetings held. Consensus reached on recommended revisions. NPRM incorporating these recommendations published in the **Federal Register** on 7/3/97. ''Track Safety Standards; Miscellaneous Revisions,'' 62 FR 36138);

• (2) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220) (Task accepted April 2, 1996. Working Group established. Ten (10) meetings held. Consensus reached on recommended revisions. NPRM incorporating these recommendations published in the **Federal Register** on 6/26/97. ''Railroad Communications; Notice of Proposed Rulemaking,'' 62 FR 34544);

• (3) Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads (Task accepted April 2, 1996. Working Group established. Two (2) meetings held.);

• (4) Reviewing and recommending revisions to Steam Locomotive Inspection standards (49 CFR Part 230) (Tasked to existing Tourist and Historic Working Group (THWG) on July 24, 1996. Five (5) Task Force meetings held. Working Group consensus reached on proposed rule text).;

• (5) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240) (Task accepted October 31, 1996. Working Group established. The working group has met 7 times. The working group decided during a recent meeting to create a task force to address medical issues; this group has met once).

• (6) Developing On-Track Equipment Safety Standards (new regulation) (This was tasked to the existing Track Standards Working Group Group on October 31, 1996. The Task Force has met 4 times since this task was assigned);

• (7) Developing Crashworthiness Specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. (New regulation) (Task accepted June 24, 1997. A working group has been established. The group has met once.);

• (8) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. (New regulation) (Task accepted June 24, 1997. A working group has been established and has met twice.)

• (9) Developing Event Recorder Data Survivability standards (New regulation (Task accepted June 24, 1997. A working group has been established, has met once, and is scheduled to meet again November 12, 1997);

• *(10) Facilitating Understanding of Current Positive Train Control (PTC) Technologies, Definitions, and Capabilities* (Task accepted September 30, 1997. A working group has been established. The initial meeting of the working group is scheduled for November 19, 27, 1997);

• *(11) Addressing any remaining issues regarding the feasibility of implementing fully integrated PTC systems* (Task accepted September 30, 1997. A working group has been established and will meet November 19, 1997);

• *(12) Discussing possible revisions to the Rules, Standards and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices and Appliances (49 CFR Part 236) to facilitating the implementation of software based signal and operating systems* (Task accepted September 30, 1997. A working group has been established and will meet November 19, 1997);

• *(13) Reviewing the current concept of a reportable ''train accident'' (Rail Equipment Accident/Incident) and assessing whether it is an appropriate way to structure and administer detailed reporting requirements for collisions, derailments and similar events involving moving equipment on the rails (49 CFR Part 225)* (Task accepted September 30, 1997. A working group has been established to begin the work required to execute this task).

If you have any questions about any of these working groups please refer to the following list of FRA contacts who can assist you with questions regarding any of the above-listed tasks:

(1) *Track Safety Standards Working Group*—Al McDowell (202) 632–3344 or Nancy Lewis (202) 632–3174;

(2) *Radio Communications Working Group*—Gene Cox (202) 632–3504 or Pattie Sun (202) 632–3183;

(3) *Tourist and Historic Working Group*—Grady Cothen (202) 632–3306 or Lisa Levine (202) 632–3189;

(4) *Steam Inspection Standards Task Force*—George Scerbo (202) 632–3363 or Lisa Levine (202) 632–3189;

(5) *Locomotive Engineer Certification Working Group*—John Conklin (202) 632–3372 or Alan Nagler (202) 632–3187;

(6) *On-Track Equipment Safety Standards Task Force*—Al McDowell (202) 632–3344 or Nancy Lewis (202) 632–3174;

(7) *Locomotive Crashworthiness Working Group*—Sean Mehrvazi (202) 632–3364 or Lisa Levine (202) 632–3189;

(8) *Locomotive Crew Working Conditions Working Group*—Brenda Hattery (202) 632–3366 or Christine Beyer (202) 632–3177; and

(9) *Event Recorder Data Survivability Working Group*—Ron Newman (202) 632–3365 or Tom Phemister (202) 632–3181.

(10) *Positive Train Control Technologies, Definitions, and Capabilities*—Grady Cothen (202) 632–3306 or Cynthia Walters (202) 632–3188.

(11) *Positive Train Control Implementation Issues*—Grady Cothen (202) 632–3306 or Cynthia Walters (202) 632–3188.

(12) *Standards for New Train Control Systems*—Grady Cothen (202) 632–3306 or Cynthia Walters (202) 632–3188; and

(13) *Definition of Reportable ''Train Accident''*—Robert Finkelstein (202) 632–3386 or Nancy Goldman (202) 632–3190.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 F.R. 9740) for more information about the RSAC.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 97–29188 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting in preparation for the fourteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held December 8–18, 1997 in Geneva, Switzerland.

ADDRESSES: Room 9230–9234, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to prepare for the fourteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. Topics to be covered during the public meeting include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, international harmonization of classification criteria and labeling, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for packagings used to transport hazardous materials and requirements for toxic by inhalation substances.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fourteenth session of the UNSCOE meeting may be obtained from the RSPA Dockets Division (202–366–5046) or by downloading them from the U Transport Division's web site at *http://www.itu.int/itudoc/un/editrans/dgdb/dgscomm.html.* This site may also be accessed through the RSPA Hazardous Materials Safety Homepage at http://www.volpe.dot.gov/ohm/.

Issued in Washington, DC, on October 30, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–29194 Filed 11–4–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Rail-Way, Inc. (WB533—10/20/97), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29278 Filed 11–4–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–29; OTS Nos. H–2965 and 02096]

Guaranty Federal Bancshares, M.H.C., Springfield, Missouri; Approval of Conversion Application

Notice is hereby given that on October 27, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Guaranty Federal Bancshares, M.H.C., Springfield, Missouri, to convert to the stock form of Organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: October 31, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–29276 Filed 11–4–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–30: OTS No. 2892]

Newport Federal Savings and Loan Association, Newport, Tennessee; Approval of Conversion Application

Notice is hereby given that on October 30, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Newport Federal Savings and Loan Association, Newport, Tennessee, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: October 31, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–29277 Filed 11–4–97; 8:45 am]

BILLING CODE 6720–01–M

federal register

Wednesday
November 5, 1997

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 567

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–22]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0985]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB31

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 97–86]

RIN 1550–AB11

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS), (collectively, the agencies) are proposing revisions to their risk-based capital standards to address the regulatory capital treatment of recourse obligations and direct credit substitutes that expose banks, bank holding companies, and thrifts (collectively, banking organizations) to credit risk. The proposal would treat direct credit substitutes and recourse obligations consistently and would use credit ratings and possibly certain other alternative approaches to match the risk-based capital assessment more closely to a banking organization's relative risk of loss in asset securitizations.

The agencies intend that any final rules adopted in connection with this proposal that result in increased risk-based capital requirements for banking organizations apply only to transactions consummated after the effective date of the final rules.

DATES: Comments must be received on or before February 3, 1998.

ADDRESSES: Comments should be directed to:

OCC: Written comments may be submitted electronically to regs.comments@occ.treas.gov or by mail to Docket No. 97–22, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Comments will be available for inspection and photocopying at that address.

Board: Comments, which should refer to Docket No. R–0985, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP500 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the FRB's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 97–86. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days or may be sent by facsimile transmission to FAX number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 to 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874–5210); Dennis Glennon, Financial Economist, Risk Analysis Division (202/874–5700); or Steve Jackson, National Bank Examiner, Treasury and Market Risk (202/874–5070).

Board: Thomas R. Boemio, Senior Supervisory Financial Analyst (202/452-2982); or Norah Barger, Assistant Director (202/452–2402), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202/898–8906), or Jamey G. Basham, Counsel, Legal Division (202/898–7265).

OTS: John F. Connolly, Senior Program Manager for Capital Policy (202/906–6465), Supervision Policy; Michael D. Solomon, Senior Policy Advisor (202/906–5654), Supervision Policy; Fred Phillips-Patrick, Senior Financial Economist (202/906–7295), Research and Analysis; Robert Kazdin, Senior Project Manager (202/906–5759), Research and Analysis; Karen Osterloh, Assistant Chief Counsel (202/906–6639), Regulation and Legislation Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

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I. Introduction and Background

A. Overview

The agencies are proposing to amend their risk-based capital standards to clarify and change the treatment of certain recourse obligations, direct credit substitutes, and securitized transactions that expose banking organizations to credit risk.

This proposal would amend the agencies' risk-based capital standards to:

- Define ''recourse'' and revise the definition of ''direct credit substitute''; [1]
- Treat recourse obligations and direct credit substitutes consistently for risk-based capital purposes; and
- Vary the capital requirements for traded and non-traded [2] positions in securitized transactions according to their relative risk exposure, using credit ratings from nationally-recognized statistical rating organizations [3] (rating agencies) to measure the level of risk.

Additionally, this proposal discusses and requests comment on two possible alternatives to the use of credit ratings for non-traded positions in securitized transactions, either or both of which may be adopted, in whole or in part, in the final rule. These alternatives would:

- Use criteria developed by the agencies, based on the criteria of the rating agencies, to determine the capital requirements; or
- Permit institutions to use historical loss information to determine the capital requirement for direct credit substitutes and recourse obligations.

The agencies request comment on all aspects of this proposal.

B. Purpose and Effect

Implementation of all aspects of this proposal would result in more consistent treatment of recourse obligations and similar transactions among the agencies, more consistent risk-based capital treatment for transactions involving similar risk, and capital requirements that more closely reflect a banking organization's relative exposure to credit risk.

The agencies intend that any final rules adopted in connection with this proposal that result in increased risk-based capital requirements for banking organizations apply only to transactions that are consummated after the effective date of those final rules. The agencies intend that any final rules adopted in connection with this proposal that result in reduced risk-based capital requirements for banking organizations apply to all transactions outstanding as of the effective date of those final rules and to all subsequent transactions. Because some ongoing securitization conduits may need additional time to adapt to any new capital treatments, the agencies intend to permit asset securitizations with no fixed term, *e.g.*, asset-backed commercial paper conduits, to apply the existing capital rules for up to two years after the effective date of any final rule.

C. Background

1. Recourse and Direct Credit Substitutes

Asset securitization is the process by which loans and other receivables are pooled, reconstituted into one or more classes or positions, and then sold. Securitization provides an efficient mechanism for institutions to buy and sell loan assets and thereby to make them more liquid.

Securitizations typically carve up the risk of credit losses from the underlying assets and distribute it to different parties. The ''first dollar'' loss or subordinate position is first to absorb credit losses; the ''senior'' investor position is last; and there may be one or more loss positions in between (''second dollar'' loss positions). Each loss position functions as a credit enhancement for the more senior loss positions in the structure.

For residential mortgages sold through certain Federally-sponsored mortgage programs, a Federal government agency or Federally-sponsored agency guarantees the securities sold to investors. However, many of today's asset securitization programs involve nonmortgage assets or are not supported in any way by the Federal government or a Federally-sponsored agency. Sellers of these privately securitized assets therefore often provide other forms of credit enhancement—first and second dollar loss positions—to reduce investors' risk of credit loss.

Sellers may provide this credit enhancement themselves through recourse arrangements. For purposes of this proposal, ''recourse'' refers to any risk of credit loss that an institution retains in connection with the transfer of its assets. While banking organizations have long provided recourse in connection with sales of whole loans or loan participations, recourse arrangements today are frequently associated with asset securitization programs.

Sellers may also arrange for a third party to provide credit enhancement in an asset securitization. If the third-party enhancement is provided by another banking organization, that organization assumes some portion of the assets' credit risk. For purposes of this proposal, all forms of third-party enhancements, *i.e.*, all arrangements in which an institution assumes risk of credit loss from third-party assets or other claims that it has not transferred, are referred to as ''direct credit substitutes.'' [4] The economic substance of an institution's risk of credit loss from providing a direct credit substitute can be identical to its risk of credit loss from transferring an asset with recourse.

Depending on the type of securitization transaction, a portion of the total credit enhancement may also be provided internally, as part of the securitization structure, through the use of spread accounts, overcollateralization, or other forms of self-enhancement. Many asset securitizations use a combination of internal enhancement, recourse, and third-party enhancement to protect investors from risk of credit loss.

2. Prior History

On June 29, 1990, the Federal Financial Institutions Examination Council (FFIEC) published a request for comment on recourse arrangements. See

[1] The OTS is adding a definition of ''standby-type letter of credit'' to be consistent with the other agencies.

[2] See section II.C.3 of this preamble for a discussion of the distinction between ''traded'' and ''non-traded'' positions.

[3] ''Nationally recognized statistical rating organization'' means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the capital rules for broker-dealers. See SEC Rule 15c3–1(c)(2)(vi)(E), (F) and (H) (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H).

[4] As used in this proposal, the terms ''credit enhancement'' and ''enhancement'' refer to both recourse arrangements and direct credit substitutes.

55 FR 26766 (June 29, 1990). The publication announced the agencies' intent to review the regulatory capital, reporting, and lending limit treatment of assets transferred with recourse and similar transactions, and set out a broad range of issues for public comment. The FFIEC received approximately 150 comment letters. The FFIEC then narrowed the scope of the review to the reporting and capital treatment of recourse arrangements and direct credit substitutes that expose banking organizations to credit-related risks. The OTS implemented some of the FFIEC's proposals (including the definition of recourse) on July 29, 1992 (57 FR 33432).

In July 1992, after receiving preliminary recommendations from an interagency staff working group, the FFIEC directed the working group to carry out a study of the likely impact of those recommendations on banking organizations, financial markets, and other affected parties. As part of that study, the working group held a series of meetings with representatives from 13 organizations active in the securitization and credit enhancement markets. Summaries of the information provided to the working group and a copy of the working group's letter sent to participants prior to the meetings are in the FFIEC's public file on recourse arrangements and are available for public inspection and photocopying. Additional material provided to the agencies from financial institutions and others since these meetings has also been placed in the FFIEC's public file. The FFIEC's offices are located at 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037.

On May 25, 1994, the agencies published a **Federal Register** notice (1994 Notice) containing a proposal to reduce the capital requirement for banks for low-level recourse transactions (transactions in which the capital requirement would otherwise exceed an institution's maximum contractual exposure); to treat first-loss (but not second-loss) direct credit substitutes like recourse; and to implement definitions of ''recourse,'' ''direct credit substitute,'' and related terms. 59 FR 27116 (May 25, 1994). The 1994 Notice also contained, in an advance notice of proposed rulemaking, a proposal to use credit ratings to determine the capital treatment of certain recourse obligations and direct credit substitutes. The OCC, Board, and FDIC (the Banking Agencies) have since implemented the capital reduction for low-level recourse transactions required by section 350 of the Riegle Community Development and Regulatory Improvement Act, Public Law 103–325, 12 U.S.C. 4808. 60 FR 17986 (OCC, April 10, 1995), 60 FR 8177 (Board, February 13, 1995); 60 FR 15858 (FDIC, March 28, 1995). (The OTS risk-based capital regulation already included the low-level recourse treatment required by 12 U.S.C. 4808. See 60 FR 45618, August 31, 1995.) The other portions of the 1994 Notice will be addressed in this proposal.

The agencies have also implemented section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160, 12 U.S.C. 1835, which made available an alternative risk-based capital treatment for qualifying transfers of small business obligations with recourse. 60 FR 45611(Board final rule, August 31, 1995); 60 FR 45605 (FDIC interim rule, August 31, 1995); 60 FR 45617 (OTS interim rule, August 31, 1995); 60 FR 47455 (OCC interim rule, September 13, 1995).

D. Current Risk-based Capital Treatment of Recourse and Direct Credit Substitutes

Currently, the agencies' risk-based capital standards apply different treatments to recourse arrangements and direct credit substitutes. As a result, capital requirements applicable to credit enhancements do not consistently reflect credit risk. The Banking Agencies' current rules are also not entirely consistent with those of the OTS.

1. Recourse

The agencies' risk-based capital guidelines prescribe a single treatment for assets transferred with recourse regardless of whether the transaction is reported as a financing or a sale of assets in a bank's Consolidated Reports of Condition and Income (Call Report). Assets transferred with any amount of recourse in a transaction reported as a financing remain on the balance sheet. Assets transferred with recourse in a transaction that is reported as a sale create off-balance sheet exposures. The entire outstanding amount of the assets sold (not just the amount of the recourse) is converted into an on-balance sheet credit equivalent amount using a 100% credit conversion factor, and this credit equivalent amount is risk-weighted.[5] In either case, risk-based capital is held against the full, risk-weighted amount of the transferred assets, subject to the low-level recourse rule which limits the maximum risk-based capital requirement to the bank's maximum contractual obligation.

For leverage capital ratio purposes, if a sale with recourse is reported as a financing, then the assets sold with recourse remain on the selling bank's balance sheet. If a sale with recourse is reported as a sale, the assets sold do not remain on the selling bank's balance sheet.

2. Direct Credit Substitutes

a. Banking Agencies. Direct credit substitutes are treated differently from recourse under the current risk-based capital standards. Under the Banking Agencies' standards, off-balance sheet direct credit substitutes, such as financial standby letters of credit provided for third-party assets, carry a 100% credit conversion factor. However, only the dollar amount of the direct credit substitute is converted into an on-balance sheet credit equivalent so that capital is held only against the face amount of the direct credit substitute. The capital requirement for a recourse arrangement, in contrast, is generally based on the full amount of the assets enhanced.

If a direct credit substitute covers less than 100% of the potential losses on the assets enhanced, the current capital treatment results in a lower capital charge for a direct credit substitute than for a comparable recourse arrangement. For example, if a direct credit substitute covers losses up to the first 20% of the assets enhanced, then the on-balance sheet credit equivalent amount equals that 20% amount and risk-based capital is held against only the 20% amount. In contrast, required capital for a first-loss 20% recourse arrangement is higher because capital is held against the full outstanding amount of the assets enhanced.

Banking organizations are taking advantage of this anomaly, for example, by providing first loss letters of credit to asset-backed commercial paper conduits that lend directly to corporate customers. This results in a significantly lower capital requirement than if the loans were on the banking organizations' balance sheets.

Under the proposal, the definition of direct credit substitute is expanded to include some items that already are partially reflected on the balance sheet, such as purchased subordinated interests. Currently, under the Banking Agencies' guidelines, these interests receive the same capital treatment as off-balance sheet direct credit substitutes. Purchased subordinated interests are placed in the appropriate risk-weight category. In contrast, if a banking organization retains a

[5] Current rules also provide for special treatment of sales of small business loan obligations with recourse. See 12 U.S.C. 1835.

subordinated interest in connection with the transfer of its own assets, this is considered recourse. As a result, the institution must hold capital against the carrying amount of the retained subordinated interest as well as the outstanding amount of all senior interests that it supports.

b. OTS. The OTS risk-based capital regulation treats some forms of direct credit substitutes (*e.g.*, financial standby letters of credit) in the same manner as the Banking Agencies' guidelines. However, unlike the Banking Agencies, the OTS treats purchased subordinated interests under its general recourse provisions (except for certain high quality subordinated mortgage-related securities). The risk-based capital requirement is based on the carrying amount of the subordinated interest plus all senior interests, as though the thrift owned the full outstanding amount of the assets enhanced.

3. Problems With Existing Risk-based Capital Treatments of Recourse Arrangements and Direct Credit Substitutes.

The agencies are proposing changes to the risk-based capital standards to address the following major concerns with the current treatments of recourse and direct credit substitutes:

- Different amounts of capital can be required for recourse arrangements and direct credit substitutes that expose a banking organization to equivalent risk of credit loss.
- The capital treatment does not recognize differences in risk associated with different loss positions in asset securitizations.
- The current standards do not provide uniform definitions of recourse, direct credit substitute, and associated terms.

E. GAAP Accounting Treatment of Recourse Arrangements

The Banking Agencies' regulatory capital treatment of asset transfers with recourse differs from the accounting treatment of asset transfers with recourse under generally accepted accounting principles (GAAP). Under GAAP, an institution that transferred an asset with recourse before January 1, 1997, must reserve in a recourse liability account the probable expected losses under the recourse obligation and meet certain other criteria in order to treat the asset as sold. An institution that transfers an asset with recourse after December 31, 1996, must surrender control over the asset and receive consideration other than a beneficial interest in the transferred asset in order to treat the asset as sold. The institution must recognize a liability for its recourse obligation, measuring this liability at its fair value or by alternative means. Although the Banking Agencies have adopted GAAP for reporting sales of assets with recourse in 1997,[6] the agencies continue to require risk-based capital in addition to the GAAP recourse liability account for recourse obligations.

The agencies have considered the arguments that several commenters (responding to the 1994 Notice) made for adopting for regulatory capital purposes the GAAP treatment for all assets sold with recourse, including those sold with low levels of recourse. Under such a treatment, assets sold with recourse in accordance with GAAP would have no capital requirement, but the GAAP recourse liability account would provide some level of protection against losses.

One of the principal purposes of regulatory capital is to provide a cushion against unexpected losses. In contrast, the GAAP recourse liability account is, in effect, a specific reserve that primarily takes into account the probable expected losses under the recourse provision. The capital guidelines explicitly state that specific reserves may not be included in regulatory capital.

Even though a transferring institution may reduce its exposure to potential catastrophic losses by limiting the amount of recourse it provides, it may still retain, in many cases, the bulk of the credit risk inherent in the assets. For example, an institution transferring high quality assets with a reasonably estimated expected loss rate of one percent that retains ten percent recourse in the normal course of business will sustain the same amount of losses it would have had the assets not been transferred. This occurs because the amount of exposure under the recourse provision is very high relative to the amount of expected losses. In such transactions the transferor has not significantly reduced its risk for purposes of assessing regulatory capital and should continue to be assessed regulatory capital as though the assets had not been transferred.

Further, the agencies are concerned that an institution transferring assets with recourse might significantly underestimate its losses under the recourse provision or the fair value of its recourse obligation, in which case it would not establish an appropriate GAAP recourse liability account for the exposure. If the transferor recorded an inappropriately small liability in the GAAP recourse liability account for a succession of asset transfers, it could accumulate large amounts of credit risk that would be only partially reflected on the balance sheet.

For these reasons, the agencies have not proposed to adopt for regulatory capital purposes the GAAP treatment for assets sold with recourse. The agencies invite additional comments on this issue.

II. Notice of Proposed Rulemaking

This proposal would amend the agencies' risk-based capital standards as follows:

- Define recourse and revise the definition of direct credit substitute (See section II.A of this preamble);
- Treat recourse obligations and direct credit substitutes consistently for risk-based capital purposes (See section II.B of this preamble); and
- Vary the capital requirements for traded and non-traded positions in securitized asset transactions according to their relative risk exposure, using credit ratings from rating agencies to measure the level of risk (See sections II.C and II.D of this preamble).

Additionally, this notice discusses and requests comment on two possible alternatives to the use of credit ratings for non-traded positions in securitized transactions, either or both of which may be adopted, in whole or in part, in the final rule (See section II.E of this preamble). These alternatives would:

- Use criteria developed by the agencies, based on the criteria of the rating agencies, to determine the capital requirements; or
- Permit institutions to use historical loss information to determine the capital requirements for direct credit substitutes and recourse obligations.

A. Definitions

1. Recourse

The proposal defines recourse to mean any arrangement in which an institution retains risk of credit loss in connection with an asset transfer, if the risk of credit loss exceeds a *pro rata* share of the institution's claim on the assets. The proposed definition of recourse is consistent with the Banking Agencies' longstanding use of this term, and is intended to incorporate into the risk-based capital standards existing agency practices regarding retention of risk in asset transfers.[7]

[6] The OTS has followed GAAP since 1989 for reporting purposes and for computation of the capital leverage ratio.

[7] The OTS currently defines the term ''recourse'' more broadly than the proposal to include arrangements involving credit risk that a thrift

Continued

Currently, the term ''recourse'' is not explicitly defined in the Banking Agencies' risk-based capital guidelines. Instead, the guidelines use the term ''sale of assets with recourse,'' which is defined by reference to the Call Report Instructions. *See* Call Report Instructions, Glossary (entry for ''Sales of Assets''). Once a definition of recourse is adopted in the risk-based capital guidelines, the Banking Agencies would remove the cross-reference to the Call Report instructions from the guidelines. The OTS capital regulation currently provides a definition of the term ''recourse,'' which would also be replaced once a final definition of recourse is adopted.

2. Direct Credit Substitute

The proposed definition of ''direct credit substitute'' is intended to mirror the definition of recourse. The term ''direct credit substitute'' would refer to any arrangement in which an institution assumes risk of credit-related losses from assets or other claims it has not transferred, if the risk of credit loss exceeds the institution's *pro rata* share of the assets or other claims. Currently, under the Banking Agencies' guidelines, this term covers guarantees and guarantee-type arrangements. As revised, it would also explicitly include items such as purchased subordinated interests, agreements to cover credit losses that arise from purchased loan servicing rights, and subordinated extensions of credit that provide credit enhancement.

3. Risks Other than Credit Risks

A capital charge would be assessed only against arrangements that create exposure to credit or credit-related risks. This continues the agencies' current practice and is consistent with the risk-based capital standards' traditional focus on credit risk. The agencies have undertaken other initiatives to ensure that the risk-based capital standards take interest rate risk and other non-credit related market risks into account.

4. Implicit Recourse

The definitions cover all arrangements that are recourse or direct credit substitutes in form or in substance. Recourse may also exist when an institution assumes risk of loss without an explicit contractual agreement or, if there is a contractual limit, when the institution assumes risk of loss in amounts exceeding the limit. The existence of implicit recourse is often a complex and fact-specific issue, usually demonstrated by an institution's actions beyond any contractual obligation. Actions that may constitute implicit recourse include: (a) Providing voluntary support for a securitization by selling assets to a trust at a discount from book value; (b) exchanging performing for non-performing assets; or (c) other actions that result in a significant transfer of value in response to deterioration in the credit quality of a securitized asset pool.

To date, the agencies have taken the position that when an institution provides implicit recourse, it should generally hold capital in the same manner as for assets sold with recourse. However, because of the complexity and fact-specific nature of many implicit recourse arrangements, questions have been raised as to how much risk the institution has effectively retained as a result of its actions and whether a different capital treatment would be warranted in some circumstances. To assist the agencies in assessing various types of implicit recourse arrangements, comment is requested on the following:

(*Question 1*) What types of actions should be considered implicit recourse, and how should the agencies treat these actions for regulatory capital purposes? Should the agencies establish different capital requirements for various types of implicit recourse arrangements? If so, how should appropriate capital requirements be determined for different types of implicit recourse arrangements? Please provide relevant data to support any recommended capital treatment.

The agencies may issue additional interpretive guidance as needed to further clarify the circumstances in which an institution will be considered to have provided implicit recourse.

One commenter responding to the 1994 Notice asked for clarification that a repurchase triggered by a breach of a standard representation or warranty (as defined below) would not be considered implicit recourse. Such a repurchase would not constitute implicit recourse because the repurchase is required by a contractual obligation created at the time of the sale.

5. Subordinated Interests in Loans or Pools of Loans

The definitions of recourse and direct credit substitute explicitly cover an institution's ownership of subordinated interests in loans or pools of loans. This continues the Banking Agencies' longstanding treatment of retained subordinated interests as recourse and recognizes that *purchased* subordinated interests can also function as credit enhancements. (The OTS currently treats both retained and purchased subordinated securities as recourse obligations.) Subordinated interests generally absorb more than their *pro rata* share of losses (principal or interest) from the underlying assets in the event of default. For example, a multi-class asset securitization may have several classes of subordinated securities, each of which provides credit enhancement for the more senior classes. Generally, the holder of any class that absorbs more than its *pro rata* share of losses from the total underlying assets is providing credit protection for all more senior classes.[8]

Two commenters questioned the treatment of purchased subordinated interests as recourse. Subordinated interests expose holders to comparable risk regardless of whether the interests are retained or purchased. If purchased subordinated interests were not treated as recourse, institutions could avoid recourse treatment by swapping retained subordinated interests with other institutions or by purchasing subordinated interests in assets originated by a conduit. The proposal would mitigate the effect of treating purchased subordinated interests as recourse by reducing the capital requirement on interests that qualify under the multi-level approach described in sections II.C, D, and E of this preamble.

6. Second Mortgages

Second mortgages or home equity loans would generally not be considered recourse or direct credit substitutes, unless they actually function as credit enhancements by facilitating the sale of the first mortgage. For example, this may occur if a lender has a program of originating first and second mortgages contemporaneously on the same property and then selling the first mortgage and retaining the second. In such a program, a second mortgage can function as a substitute for a recourse arrangement because it is intended that the holder of the second mortgage will absorb losses before the holder of the first mortgage does if the borrower fails to make all payments due on both loans.

The preamble to the 1994 Notice stated that a second mortgage originated

assumes or accepts from third-party assets as well as risk that it retains in an asset transfer. Under the proposal, as explained below, credit risk that an institution assumes from third-party assets would fall under the definition of ''direct credit substitute'' rather than ''recourse.''

[8] Current OTS risk-based capital guidelines exclude certain high-quality subordinated mortgage-related securities from treatment as recourse arrangements due to their credit quality. Consistent with these capital guidelines, the proposed OTS rule text includes the face value of high-quality subordinated mortgage-related securities in the 20% risk weight category.

contemporaneously with the first mortgage would be presumed to be recourse. Many commenters criticized this position as overly broad. The agencies agree and do not propose to retain the presumption.

However, the agencies expect institutions to follow prudent underwriting practices in making combined extensions of credit (*i.e.*, a contemporaneous first and second mortgage loan) or other second mortgages to a single borrower. If an institution does not apply prudent underwriting standards in making combined loans, the agencies will consider this practice in determining whether the institution is using such mortgages to retain recourse and generally in evaluating the soundness of the institution's underwriting standards and in determining the adequacy of the institution's capital.

7. Representations and Warranties

When a banking organization transfers assets, including servicing rights, it customarily makes representations and warranties concerning those assets. When a banking organization purchases loan servicing rights, it may also assume representations and warranties made by the seller or a prior servicer. These representations and warranties give certain rights to other parties and impose obligations upon the seller or servicer of the assets. The definitions in this proposal would treat as recourse or direct credit substitutes any representations or warranties that create exposure to default risk or any other form of open-ended, credit-related risk from the assets that is not controllable by the seller or servicer. This reflects the agencies' current practice with respect to recourse arising out of representations and warranties, and explicitly recognizes that a servicer with purchased loan servicing rights can also take on risk through servicer representations and warranties.

The agencies recognize, however, that the market requires asset transferors and servicers to make certain representations and warranties, and that most of these present only normal operational risk. Currently, the agencies have no formal definitions distinguishing between these types of standard representations and warranties and those that create recourse or direct credit substitutes. The proposal therefore defines the term ''standard representations and warranties'' and provides that seller or servicer representations or warranties that meet this definition are not considered to be recourse obligations or direct credit substitutes.

Under the proposal, ''standard representations and warranties'' are those that refer to an existing state of facts that the seller or servicer can either control or verify with reasonable due diligence at the time the assets are sold or the servicing rights are transferred. These representations and warranties will not be considered recourse or direct credit substitutes, provided that the seller or servicer performs due diligence prior to the transfer of the assets or servicing rights to ensure that it has a reasonable basis for making the representation or warranty. The term ''standard representations and warranties'' also covers contractual provisions that permit the return of transferred assets in the event of fraud or documentation deficiencies, (*i.e.*, if the assets are not what the seller represented them to be), consistent with the current Call Report Instructions governing the reporting of asset transfers. After a final definition of ''standard representations and warranties'' is adopted for the risk-based capital standards, the Banking Agencies would recommend to the FFIEC that the Call Report Instructions be changed to conform to the capital guidelines and the OTS would similarly amend the instructions for the Thrift Financial Report (TFR).

Examples of ''standard representations and warranties'' include seller representations that the transferred assets are current (*i.e.*, not past due) at the time of sale; that the assets meet specific, agreed-upon credit standards at the time of sale; or that the assets are free and clear of any liens (provided that the seller has exercised due diligence to verify these facts). An example of a nonstandard representation and warranty is an agreement by the seller to buy back any assets that become more than 30 days past due or default within a designated time period after the sale. Another example of a nonstandard representation and warranty is a representation that all properties underlying a pool of transferred mortgages are free of environmental hazards. This representation is not verifiable by the seller or servicer with reasonable due diligence because it is not possible to absolutely verify that a property is, in fact, free of all environmental hazards. Such an open-ended guarantee against the risk that unknown but currently existing hazards might be discovered in the future would be considered recourse or a direct credit substitute. However, a seller's representation that all properties underlying a pool of transferred mortgages have undergone environmental studies and that the studies revealed no known environmental hazards would be a ''standard representation and warranty'' (assuming that the seller performed the requisite due diligence). This is a verifiable statement of facts that would not be considered recourse or a direct credit substitute.

Some commenters responding to the 1994 Notice supported this proposed definition. Many commenters addressing the definition opposed it. Commenters objected to the definition for the following reasons: treating representations and warranties as recourse would place banks at a competitive disadvantage with other institutions; representations and warranties are not equivalent to recourse because the risk involved may be considerably less than the risk of borrower default; and representations and warranties that relate to operational risk should not be recourse because recourse is supposed to address only credit risks. Some commenters suggested the agencies replace the due diligence requirement with a ''not known to be false'' standard.

The agencies have decided to retain the proposed definition of standard representations and warranties for purposes of this proposal. Where a representation or warranty functions as recourse, failure to recognize the recourse obligation and to require appropriate capital would create a loophole that would defeat the purposes of the proposal.

The definitions of ''recourse,'' ''direct credit substitute,'' and ''standard representations and warranties'' are intended to treat as recourse or a direct credit substitute only those representations or warranties that create exposure to default risk or any other form of open-ended, credit-related risk from the assets that is not controllable by the seller or servicer. The agencies wish to clarify that only those representations and warranties that expose an institution to credit risk (as opposed to interest rate risk) will be classified as recourse or direct credit substitutes.

The proposal would treat as recourse a representation or warranty that functions as recourse but that is guaranteed by a third party. The agencies request comment on whether the recourse rules should place assets subject to a representation or warranty that constitutes recourse in the 20 percent risk weight category if a third party guarantees the representation or warranty and has unsecured debt that is rated in the highest rating category.

8. Loan Servicing Arrangements

The proposed definitions of ''recourse'' and ''direct credit substitute'' cover loan servicing arrangements if the servicer is responsible for credit losses associated with the loans being serviced. However, cash advances made by residential mortgage servicers to ensure an uninterrupted flow of payments to investors or the timely collection of the mortgage loans are specifically excluded from the definitions of recourse and direct credit substitute, provided that the residential mortgage servicer is entitled to reimbursement for any significant advances.[9] Such advances are assessed risk-based capital only against the amount of the cash advance, and are assigned to the risk-weight category appropriate to the party obligated to reimburse the servicer.

If the residential mortgage servicer is not entitled to full reimbursement, then the maximum possible amount of any nonreimbursed advances on any one loan must be contractually limited to an insignificant amount of the outstanding principal on that loan in order for the obligation to make cash advances to be excluded from the definitions of recourse and direct credit substitute. This treatment reflects the agencies' traditional view that servicer cash advances meeting these criteria are part of the normal mortgage servicing function and do not constitute credit enhancements.

Commenters generally supported the proposed definition of servicer cash advances. Some commenters asked for clarification of the terms ''insignificant'' and whether ''reimbursement'' includes reimbursement payable out of subsequent collections or reimbursement in the form of a general claim on the party obligated to reimburse the servicer. Nonreimbursed advances contractually limited to no more than one percent of the amount of the outstanding principal would be considered insignificant. Reimbursement includes reimbursement payable from subsequent collections and reimbursement in the form of a general claim on the party obligated to reimburse the servicer, provided that the claim is not subordinated to other claims on the cash flows from the underlying asset pool.

[9] Servicer cash advances include disbursements made to cover foreclosure costs or other expenses arising from a loan in order to facilitate its timely collection (but not to protect investors from incurring these expenses).

9. Spread Accounts and Overcollateralization

Several commenters requested that the agencies state in their rules that spread accounts and overcollateralization do not impose a risk of loss on an institution and are not recourse. By its terms, the definition of recourse covers only the retention of risk in a sale of assets. Neither a spread account (unless reflected on an institution's balance sheet) nor overcollateralization ordinarily impose a risk of loss on an institution, so neither would fall within the proposed definition of recourse. However, a spread account reflected as an asset on an institution's balance sheet would be a form of recourse or direct credit substitute and would be treated accordingly for risk-based capital purposes.

B. Treatment of Direct Credit Substitutes

The agencies are proposing to extend the current risk-based capital treatment of asset transfers with recourse, including the low-level recourse rule, to direct credit substitutes. As previously explained, the current risk-based capital assessment for a direct credit substitute such as a standby letter of credit may be dramatically lower than the assessment for a recourse provision that creates an identical exposure to risk. As noted previously, the OTS capital rule already treats most direct credit substitutes (other than financial standby letters of credit) in the same manner as recourse obligations.

Currently, an institution that sells assets with 10 percent recourse must hold capital against the full amount of the assets transferred. On the other hand, an institution that extends a letter of credit covering the first 10 percent of losses on the same pool of assets must hold capital against only the face amount of the letter of credit. Banking organizations are taking advantage of this anomaly by providing first loss letters of credit to asset-backed commercial paper conduits that lend directly to corporate customers, which results in a significantly lower capital requirement than if the loans had been on the organizations' balance sheets and were sold with recourse.

In the 1994 Notice, the agencies proposed to change only the treatment of direct credit substitutes that absorb the first dollars of losses from the assets enhanced. The agencies proposed to delay changing the treatment of other direct credit substitutes until a multi-level approach could be implemented. Some commenters suggested that the agencies adopt a comprehensive approach, implementing a change in the treatment of direct credit substitutes only in the context of a multi-level approach, and observed that a piecemeal approach would be unduly disruptive. The agencies agree and now propose to implement the change in the treatment of direct credit substitutes in combination with the multi-level approach. As proposed, the multi-level approach applies to direct credit substitutes and recourse obligations related to asset securitizations. The agencies request comment on how the final rule could prudently and effectively apply the multi-level approach to direct credit substitutes and recourse obligations not related to asset securitizations.

Several commenters objected to the proposed treatment of direct credit substitutes as recourse. Commenters objected that the proposed capital treatment would impair the competitive position of U.S. banks and thrifts and that the business of providing third-party credit enhancements has historically been safe and profitable for banks. Notwithstanding these concerns, the agencies believe that the current treatment of direct credit substitutes is not consistent with the treatment of recourse obligations, and that the difference in treatment between the two forms of credit enhancement invites institutions to convert recourse obligations into direct credit substitutes in order to avoid the capital requirement applicable to recourse obligations and balance-sheet assets. The agencies request comment on the proposed treatment of direct credit substitutes and on the effect of the proposed treatment on the competitive position of U.S. banks.

The Banking Agencies have raised the issue of increasing the capital requirement for direct credit substitutes and lowering the capital requirement for highly-rated senior securities with the bank supervisory authorities from the other countries represented on a subgroup of the Basle Committee on Banking Supervision in an effort to eliminate competitive inequities.

C. Multi-level Ratings-based Approach

Many asset securitizations carve up the risk of credit losses from the underlying assets and distribute it to different parties. A credit enhancement (that is, a recourse arrangement or direct credit substitute) that has no prior loss protection is a ''first dollar'' loss position. There may be one or more layers of additional credit enhancement after the first dollar loss position. Each loss position functions as a credit enhancement for the more senior loss

positions in the structure. Currently, the risk-based capital standards do not vary the rate of capital assessment with differences in credit risk represented by different credit enhancement or loss positions.

To address this issue, the agencies are proposing a ''multi-level'' approach to assessing capital requirements on recourse obligations, direct credit substitutes, and senior securities in asset-securitizations based on their relative exposure to credit risk. The agencies are proposing a ratings-based approach that would use credit ratings from the rating agencies to measure relative exposure to credit risk and to determine the associated risk-based capital requirement. The use of credit ratings would provide a way for the agencies to use market determinations of credit quality to identify different loss positions for capital purposes in an asset securitization structure. This may permit the agencies to give more equitable treatment to a wide variety of transactions and structures in administering the risk-based capital system.

Under the ratings-based approach, the capital requirement for a recourse obligation, direct credit substitute, or senior security would be determined as follows: [10]

- A position rated in the highest investment grade rating category would receive a 20 percent risk weight.
- A position rated investment grade but not in the highest rating category would receive one of two alternative treatments the agencies are considering: (1) The ''face value'' option would apply a 100 percent risk weight to the book value or face amount of the position; or (2) the ''modified gross-up'' option would apply a 50 percent risk weight to the amount of the position plus all more senior positions. (Section II.D of this preamble discusses and provides examples of these two alternatives.)
- Recourse obligations and direct credit substitutes not qualifying for a reduced capital charge and positions rated below investment grade would receive ''gross-up'' treatment—the institution holding the position would hold capital against the amount of the position plus all more senior positions, subject to the low-level recourse rule.[11]

If a recourse obligation, direct credit substitute, or senior security receives different ratings from the rating agencies, the highest ratings would determine the capital treatment. For traded positions, the single highest rating would apply. For positions that require two ratings (*see* section II.C.3 of this preamble), the lower of the two highest ratings would apply.

1. 1994 Notice

The 1994 Notice described, in an advance notice of proposed rulemaking, a ratings-based approach under which investment grade positions rated in the highest rating category would receive a 20 percent risk weight and other investment grade positions would receive a 100 percent risk weight. Some commenters responding to the 1994 Notice supported the ratings-based approach described in that notice as a flexible, efficient, market-oriented way to measure risk in securitizations. Many commenters also noted that a ratings-based approach was not a perfect or complete solution, especially for non-traded positions that would otherwise not need to be rated. The agencies recognize additional options for non-traded positions could be useful in conjunction with or in lieu of the ratings-based approach and are considering other approaches, which are described in section II.E of this preamble.

In the 1994 Notice the agencies suggested that a ratings-based, multi-level approach should be restricted to transactions involving the securitization of large, diversified asset pools in which all forms of first dollar loss credit enhancement are either completely free of third-party performance risk or are provided internally as part of the securitization structure. Additionally, the agencies had suggested that the ratings-based approach be available only for positions other than first-loss positions. Many commenters pointed out that credit ratings incorporate this information and that the threshold criteria were redundant. The agencies agree and have not included these criteria in the proposal.

2. Effect of Ratings Downgrades

The ratings-based approach would be based on current ratings, so that a rating downgrade or withdrawal of a rating could change the treatment of a position under the proposal. However, a downgrade by a single rating agency rating would not affect the capital treatment of a position if the position still qualified for the treatment under another rating from a different rating agency.

3. Non-traded Positions

In response to the 1994 Notice, one rating agency expressed concern that regulatory use of ratings could undermine the integrity of the rating process.[12] Ordinarily, according to the commenter, there is a tension between the interests of the investors who rely on ratings and the interests of the issuers who pay rating agencies to generate ratings. Under the ratings-based approach, the holder of a recourse obligation or direct credit substitute that is not traded or sold may, in some cases, ask for a rating just to qualify for a favorable risk weight. The rating agency expressed a strong concern that, without the counterbalancing interest of investors who will be relying on the rating, rating agencies may have an incentive to issue inflated ratings.

In response to this concern, the agencies have developed proposed criteria to reduce the possibility of inflated ratings and inappropriate risk weights if ratings are used for a position that is not traded. The agencies are proposing that such a position could qualify for the ratings-based approach if: (1) It qualifies under ratings from two different rating agencies; (2) the ratings are publicly available; (3) the ratings are based on the same criteria used to rate securities sold to the public; and (4) at least one position in the securitization is traded.

For purposes of this proposal a position is considered ''traded'' if, at the time it is rated, there is a reasonable expectation that in the near future: (1) The position may be sold to investors relying on the rating or (2) a third party may enter into a transaction such as a loan or repurchase agreement involving the position in which the third party relies on the rating of the position.

In Section II.E of this preamble, the agencies describe two alternative approaches to the ratings-based approach for non-traded securitization positions: the ''ratings benchmark'' approach and the ''historical loss'' approach. The agencies may decide to adopt either or both of these approaches, or portions of them, to either replace or supplement the ratings-

[10] In this preamble, ''AAA'' refers to the highest investment-grade rating, and ''AA'', ''A'', and ''BBB'' refer to other investment-grade ratings. These rating designations are illustrative and do not indicate any preference or endorsement of any particular rating agency designation system.

[11] Under the ''gross-up'' treatment, a position is combined with all more senior positions in the transaction. The result is then risk-weighted based on the nature of the underlying assets. For example, if an institution retains a first-loss position in a pool of mortgage loans that qualify for a 50 percent risk weight, the institution would include the full amount of the assets in the pool, risk-weighted at 50 percent, in its risk-weighted assets for purposes of determining its risk-based capital ratio. The ''low level'' recourse rule limits the capital requirement for recourse obligations to the institution's maximum contractual obligation. 12 U.S.C. 4808.

[12] See T. McGuire, Moody's Investors Service, Ratings in Regulation: A Petition to the Gorillas (1995).

based approach for non-traded positions.

(*Question 2*) How could the agencies prudently and effectively apply the multi-level approach to direct credit substitutes and recourse obligations not related to asset securitizations?

(*Question 3*) What would be the most appropriate oversight mechanism for verifying ratings on nontraded positions? For instance, should an institution be required to obtain a detailed explanation from the rating agency of the basis for the rating on the non-traded position? Should the institution be required to make this substantiating information available to the regulatory agencies for review purposes?

(*Question 4*) How can the agencies determine if a rating on a non-traded position is inappropriately high? Does any available evidence show that regulatory rules based on ratings for traded positions have led to inappropriately high ratings?

(*Question 5*). For a rated position to be considered traded, an institution must have a reasonable expectation when the position is rated that a sale or other transaction involving the position will take place in the near future. The agencies request comment on this definition and on the time period that is appropriate to use for defining the ''near future.''

D. Face Value and Modified Gross-up Alternatives for Investment Grade Positions Below the Highest Investment Grade Rating

1. Description of Approaches

The agencies are seeking comment on two alternative approaches for calculating the capital requirement for investment grade positions rated below the highest investment grade level (*i.e.*, AAA).[13] One alternative, the ''face value'' approach, would apply a 100 percent risk weight to the book value or face amount of all investment grade positions below the highest investment grade level, regardless of their position within a securitization structure. The other alternative, the ''modified gross-up'' approach, would gross-up all investment grade positions below the highest investment grade level and then apply a 50 percent risk weight to the grossed-up amount. For senior investment grade positions below the highest investment grade level, this approach would have the effect of applying a 50 percent risk weight to these positions.[14] The agencies seek comment on which of these two alternative approaches should be adopted or on possible alternatives to the two described here.

a. Rationale for the Modified Gross-Up Proposal.—The modified gross-up approach is being proposed because of a concern that junior positions that represent only a small portion of a securitization (so-called ''thin-strip'' mezzanine positions) may qualify for an investment grade rating despite a concentration of risk on the position that makes them substantially more risky than investment grade whole securities with the same underlying collateral. Some rating agencies do not take into account the severity of loss posed by this risk concentration when rating these mezzanine positions. Other rating agencies do so in a way that may be insufficient for risk-based capital purposes. (*See* detailed explanations in subsections b and c).

An underlying premise of the modified gross-up approach is that an investment grade thin-strip mezzanine piece likely poses more risk of a larger percentage loss than a similarly rated whole asset-backed security. This additional risk is related to the variability of losses on the mezzanine position.[15]

Additionally, there is some evidence that investors account for the additional concentration of credit risk in thin-strip mezzanine positions by demanding higher yields for these positions. This is especially the case for ratings that do not account for severity of loss on the mezzanine position.

The modified gross-up capital treatment is designed to account for the fact that a thin-strip mezzanine position and whole security with the same credit ratings have similar credit risks and should, therefore, have similar dollar capital requirements. Relative to the ''face value'' treatment, it would more fully account for the concentration risk in these positions as it relates to the current risk-based capital framework.

The modified gross-up proposal would gross-up mezzanine positions to take into account any additional credit risk concentration that may not be fully captured by the ratings. However, if such positions are rated investment grade, but are below the highest investment grade level, this proposal would place their grossed-up amounts in the 50 percent risk weight category. In addition, senior investment grade positions below the highest investment grade level would be placed in the 50 percent risk weight category. The 50 percent risk weight was selected because it lies between the agencies' proposed 20 percent risk weight for the highest investment grade level and the 100 percent risk weight that applies to most positions below investment grade that would be fully grossed-up in this proposed rule.

b. Concerns with Ratings Based on Probability of Default. The agencies understand that certain rating agencies base their ratings on the probability that the position will experience any losses, regardless of the severity of loss on the position. These types of ratings will be referred to as ''probability of default'' ratings.

If a rating for a security is based solely on the probability of default (*i.e.*, the probability of any losses), both a whole asset-backed security and a junior security carved out of that whole security will receive exactly the same rating. Both securities have the same probability of default. Since the junior piece is smaller than the whole security, any losses on the security's underlying loan pool will create a larger loss as a percentage of the junior piece (*i.e.*, a higher loss severity) than the percentage loss on the larger whole security.

Consider the following: Assume that $1,050 in commercial loans are used to create a $1,000 whole security, Security 1, and a $50 credit enhancement supporting Security 1. The $1,000 security receives the lowest investment grade rating (BBB), based on the $50 credit enhancement (the C piece). The $1,000 security is subsequently divided into two pieces, a $900 senior piece, Security 2A (the A piece), and a $100 junior piece, Security 2B (the B piece, which is the mezzanine position between the A and C pieces). The senior piece receives a AAA rating because its probability of default has decreased. The junior piece, on its own, will still receive a BBB rating because its

[13] The option that is chosen would be applicable to the ratings benchmark and historical loss approaches discussed later in this preamble.

[14] If a subordinated position receives the highest investment grade rating, it would not be grossed up under the modified gross-up approach. This is due to the relatively low risk implied by the rating.

[15] The variability of loss can be characterized by its variance, which measures the distribution of potential losses around the expected loss. The larger the variance, the more likely that the actual outcome will be further away from the expected loss. For example, consider two securities with the same expected loss. The first security has two possible loss scenarios, $7 and $13, that each have a probability of 50 percent. The expected loss on this security is $10, but its variance is 9 and its standard deviation is 3. A second security has two possible loss scenarios, $0 and $20, that also have probabilities of 50 percent. The expected loss on this security is also $10, but its variance is 100 and its standard deviation is 10. The variances and standard deviations for the two securities are very different. From a capital adequacy standpoint, the second security poses a greater risk of loss than the first security. Hence, the second security should have a larger capital cushion, even though the expected loss on both positions is the same.

probability of default is the same as the $1,000 whole security prior to dividing the whole security into two pieces. The percentage impact of any unexpected losses on the junior piece, though, can be many times greater than that on the whole security because any losses on the underlying pool of loans will be absorbed by the smaller principal amount of the junior security. (*See* Figure 1.)

Assume that most of the risk of credit loss for the $1,050 pool of commercial loans described previously is concentrated in the bottom $150 portion of the loans. The credit enhancement (the C piece) would absorb the first $50 of losses. The $100 junior piece (*i.e.*, Security 2B, the mezzanine position) would, therefore, contain the balance of the credit risk of the $1,000 whole security. Since most of the credit risk of the $1,000 whole security is concentrated in this junior piece, for capital adequacy purposes, the appropriate dollar capital charge on the $100 junior piece and the $1,000 security should, in theory, be approximately the same. This would produce an equal capital buffer for positions with approximately equal credit risk. On a percentage basis, applying the same dollar capital charge against this mezzanine position and the whole security results in a ten-times higher percentage requirement on the mezzanine position than the ''face value'' option because its face value is one-tenth the size of the whole security ($100 versus $1,000).

c. Concerns with Ratings Based on Expected Losses. The agencies understand that some ratings are provided based on expected losses (*i.e.*, the sum of all the possible losses weighted by the probabilities of their occurrence) rather than just the probability of default. This approach takes into account both the severity and likelihood of losses, and therefore addresses some of the problems presented by the probability of default approach. Rating agencies that use the expected loss approach require a small increase in the credit enhancement (the C piece) supporting the junior piece (Security 2B) in order for this piece to obtain the same credit rating as the whole security (Security 1). While this additional credit enhancement is required to account for the concentration of credit risk in the junior piece, for risk-based capital purposes, the enhancement may not fully compensate for this concentration risk. (Figure 2)

d. Concerns About Modified Gross-up Proposal. There is some concern that the additional capital that the modified gross-up approach requires for certain situations may be disproportionate to the extent to which ratings, in fact, fail to capture the concentration of risk in mezzanine positions. In particular, for multi-tier securitizations that have several investment grade tiers below the highest investment grade rating, the modified gross-up approach may require too much capital when all tiers are held in the banking system because each tier would be grossed up and placed in the 50 percent risk weight category. Example 4 illustrates this concern.

(Question 6). The agencies request comments comparing the face value treatment with the modified gross-up treatment, and on other refinements the agencies could consider to address their concerns regarding the capital charge that would apply to thin-strip mezzanine positions under the ratings-based approach.

(Question 7). For the modified gross-up approach, the agencies have some concern that a 50 percent risk-weighting may be inappropriate to apply to the grossed-up positions of securitizations. If this is the case, what should the alternative risk weight be for the grossed-up security and what data are available to support this alternative risk weight?

(Question 8). For a thin-strip mezzanine position, a rating agency that uses the expected losses approach requires a higher credit enhancement to obtain a specified rating than a rating agency that uses the probability of loss approach because the former takes into account the loss severity of the position. Should the agencies have different capital standards based on which of the two approaches is used for determining the rating for the position?

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Figure 1 -- Probability of Loss Approach

(Security 1 and Security 2B are Rated BBB, Security 2A is Rated AAA)

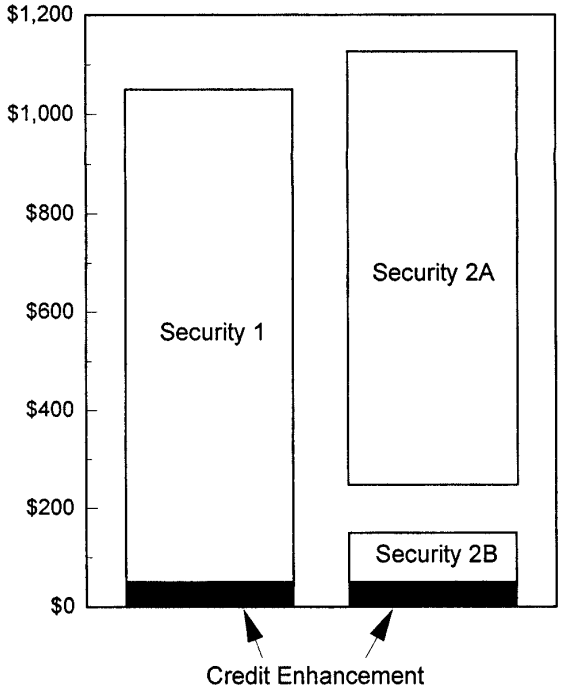
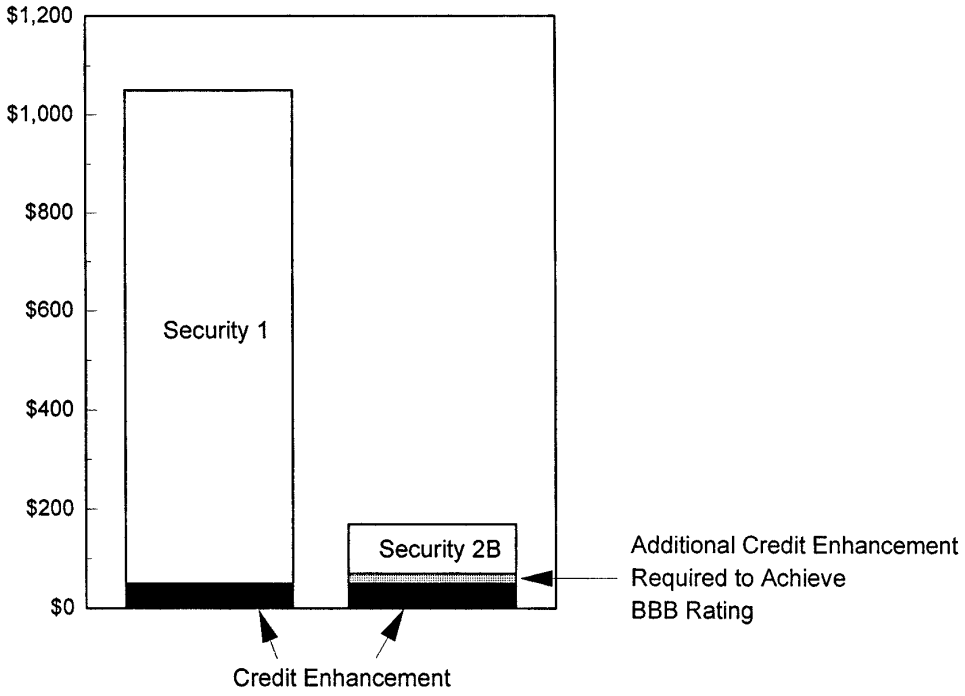


Figure 2 -- Expected Value Approach

(Security 1 and Security 2B are Rated BBB)



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2. Examples of Face Value and Modified Gross-up Approaches

The capital requirements under the modified gross-up approach would differ substantially from a face-value treatment. The modified gross-up approach results in a higher capital requirement for thin-strip BBB-rated mezzanine positions than the face value approach. On the other hand, for senior BBB-rated positions, the modified gross-up approach results in a lower capital requirement than the face value approach.

For instance, based on the example cited previously, the modified gross-up approach for the $100 BBB-rated mezzanine position (Security 2B) would produce a capital charge of $40 (the grossed-up amount which is equal to Security 2A plus Security 2B, $1,000, times 50 percent times 8 percent) while the face value approach would produce a capital requirement of $8 (the face amount of Security 2B, $100, times 100 percent times 8 percent). For the $1,000 senior BBB-rated position (Security 1, the whole security), the modified gross-up approach would produce a capital requirement of $40 ($1,000 times 50 percent times 8 percent) while the face value approach would produce a capital requirement of $80 ($1,000 times 100 percent times 8 percent).

The four following examples illustrate, for various types of securitization structures, the capital requirements for thrifts and banks under current rules and under the proposed face value and modified gross-up alternatives.

Example 1

Bank A issues three classes of securities that are backed by a $100 million pool of loans. These classes include a bottom-level (first-loss) subordinated class of $11 million, a publicly-traded middle-level subordinated class of $9 million, and a publicly-traded senior class of $80 million. Bank A retains the bottom-level class and sells the other two classes to other banks or thrifts.

Under the face value and modified gross-up approaches, Bank A, retaining the bottom-level subordinated class, would be required to hold risk-based capital equal to 8 percent of the $100 million pool or $8 million (the full effective risk-based capital requirement for the outstanding amount of the assets enhanced). Assume that because the subordinated class provides sufficient first dollar loss enhancement, a nationally recognized statistical rating organization gives the $9 million publicly-traded middle class the lowest investment grade rating. Under the face value approach, the capital requirement for an institution holding the position would be 8 percent of $9 million or $720 thousand. Under the modified gross-up approach the capital requirement is 4 percent (50 percent times 8 percent) of the grossed-up amount of $89 million ($9 million plus $80 million) or $3.56 million. Finally, assume that the $80 million senior class receives the highest credit rating, which qualifies it for a 20 percent risk weight under both approaches. The capital requirement for an institution holding this piece would be 1.6 percent (20 percent times 8 percent) of $80 million or $1.28 million. Table 1 summarizes this example.

TABLE 1.—A–B–C STRUCTURE

[Underlying Assets—$100 million of Non-Mortgage Loans]

Position	Size ($ mil)	Credit rating	Current capital requirement for thrifts ($ mil)	Current capital requirement for banks ($ mil)	Face value approach ($ mil)	Modified gross-up approach ($ mil)
A	$80	AAA	$6.40	$6.40	$1.28	$1.28
B	9	BBB	7.12	0.72	0.72	3.56
C	11	Unrated	8.00	8.00	8.00	8.00
Total Capital			21.52	15.12	10.00	12.84

Example 2

Bank A issues two classes of securities that are backed by a $100 million pool of loans. These classes include a bottom-level (first-loss) subordinated class of $20 million and a publicly-traded senior class of $80 million. Bank A retains the bottom-level class and sells the senior class to other banks or thrifts.

Under both the face value and the modified gross-up approaches, Bank A, retaining the bottom-level subordinated class, would be required to hold risk-based capital equal to 8 percent of the $100 million pool or $8 million (the full effective risk-based capital requirement for the outstanding amount of the assets enhanced). Assume that because the subordinated class provides sufficient first dollar loss enhancement, a nationally recognized statistical rating organization gives the $80 million publicly-traded senior class an A rating. Under the face value approach, the capital requirement for an institution holding position would be 8 percent of $80 million or $6.4 million. Under the modified gross-up approach, the capital requirement is 4 percent (50 percent times 8 percent) of the grossed-up amount of $80 million (which, in this case, is the senior piece) or $3.2 million. Table 2 summarizes this example.

TABLE 2.—A–B STRUCTURE

[Underlying Assets—$100 million of Non-Mortgage Loans]

Position	Size ($ mil)	Credit rating	Current capital requirement for thrifts ($ mil)	Current capital requirement for banks ($ mil)	Face value approach ($ mil)	Modified gross-up approach ($ mil)
A	$80	A	$6.40	$6.40	$6.40	$3.20
B	20	Unrated	8.00	8.00	8.00	8.00
Total Capital			14.40	14.40	14.40	11.20

Example 3

Bank A issues four classes of securities that are backed by a $100 million pool of mortgage loans. These classes include a bottom-level (first-loss) subordinated class of $0.75 million (the D position), two thin publicly-traded middle-level subordinated classes (the B and C positions, $1.5 and $0.75 million, respectively), and a senior class of $97 million which meets the requirements for a SMMEA security. Bank A retains the bottom-level class and sells the other three

classes to banks or thrifts. (Under current rules, the Banking Agencies apply a 100 percent risk weight to the B and C positions, even though the underlying assets have a 50 percent risk weight, because the B and C positions are subordinated.)

Under both the face value and the modified gross-up approaches, Bank A, retaining the bottom-level subordinated class, would be required to hold risk-based capital equal to 4 percent of the $100 million pool, limited to its $0.75 million maximum exposure (low-level recourse). Assume that because the subordinated class provides sufficient prior credit enhancement to the classes above it, a nationally recognized statistical rating organization gives the two publicly-traded middle classes ratings of BBB and A and the senior class a rating of AAA. The capital requirements for the various tranches are as follows. The current treatment for banks holding the $97 million AAA-rated senior mortgage position is to apply a 50 percent risk weight to the position resulting in a capital requirement of $3.88 million ($97 million times 50 percent times 8 percent). The current treatment for thrifts holding this $97 million position is to apply a 20 percent risk weight to the position resulting in a capital requirement of $1.552 million ($97 million times 20 percent times 8 percent). Under both the face value and modified gross-up approaches, the 20 percent risk weight would apply to the $97 million position. For the two investment grade positions below AAA (the B and C positions), the current thrift rules require full gross-up of the positions and the resulting capital requirement is subject to the low-level recourse rule that limits the requirement to the size of the position. The modified gross-up approach results in a capital requirement exceeding the size of the position and would also be subject to the low-level rule. The current bank rules, which use the face value approach, would apply a 100 percent risk weight to the position. Table 3 summarizes this example.

TABLE 3—MULTI-TRANCHE STRUCTURE

[Underlying Assets—$100 million of 50 percent Risk-Weight Mortgage Loans]

Position	Size ($ mil)	Credit rating	Current capital requirement for thrifts ($ mil)	Current capital requirement for banks ($ mil)	Face value approach ($ mil)	Modified gross-up approach ($ mil)
A	$97.0	AAA	$1.552	$3.880	$1.552	$1.552
B	1.5	A	1.500	0.120	0.120	1.500
C	0.75	BBB	0.750	0.060	0.060	0.750
D	10.75	Unrated	0.750	0.750	0.750	0.750
Total Capital			4.552	4.810	2.482	4.552

Example 4

A bank issues seven classes of securities (A through G) backed by a $100 million pool of loans and retains a junior $6 million subordinated interest. Additional credit enhancement available to the class G securities enables those securities to obtain an A rating. The other positions are rated as indicated in Table 4.

TABLE 4—MULTI-TRANCHE STRUCTURE

[Underlying Assets—$100 million of Non-Mortgage Loans]

Position	Size ($ mil)	Credit rating	Current capital requirement for thrifts ($ mil)	Current capital requirement for banks ($ mil)	Face value approach ($ mil)	Modified-gross-up approach ($ mil)
A	$32	AAA	$2.56	$2.56	0.51	0.51
B	21	AAA	4.24	1.68	0.34	0.34
C	17	AAA	5.60	1.36	0.27	0.27
D	6	AA	6.00	0.48	0.48	3.04
E	6	A	6.00	0.48	0.48	3.28
F	6	BBB	6.00	0.48	0.48	3.52
G	6	A	6.00	0.48	0.48	3.76
Retained	6	Unrated	6.00	6.00	6.00	6.00
Total Capital			42.40	13.52	9.04	20.72

E. Alternative Approaches

1. Ratings Benchmark Approach

a. Description of Approach. Because of some concerns with the use of the ratings-based approach for non-traded positions, the agencies are considering another alternative—the ratings benchmark approach. Under this alternative, the agencies would issue benchmark guidelines that would be used in assessing the relative credit risk of non-traded positions in specified standardized securitization structures. The ratings benchmarks would set credit enhancement requirements and other pool standards for such securitizations. If a non-traded position in such a securitization fulfills the applicable standards, and the securitization structure includes at least one traded position, the non-traded position will be eligible for the same capital treatment as investment-grade positions under the ratings-based approach.

The agencies are considering this approach: (1) To recognize and build on consensus in the market regarding the amount of prior credit enhancement and pool standards necessary to obtain an ''A'' rating from the rating agencies; (2) To reduce the cost and regulatory burden of requiring institutions to obtain ratings on non-traded positions in such securitizations; and (3) To ensure that the agencies retain supervisory discretion to supplement the rating agencies' standards by adding criteria that the agencies consider essential to protect the safe operation of insured institutions.

b. Development and Application of Ratings Benchmarks. The credit enhancement requirements and other pool standards for each type of securitization would be based on information available from the rating agencies regarding the relative credit risk of various types of asset pools. The ratings benchmark for each type of pool

would be based on the rating agencies' requirements for credit enhancement and other pool standards necessary for the assignment of an ''A'' rating. Relying on the ''A'' rating standard provides assurance of a level of credit quality and permits the use of a relatively simple benchmark, while ensuring that the noninvestment-grade positions are not given preferential capital treatment.

The agencies would limit the application of the ratings benchmark approach to positions in a securitization structure in which there is at least one traded position. This limitation is intended to ensure that the pool standards imposed on securitizations by the rating agency selected to rate the traded position would provide an extra measure of protection reinforcing the agencies' benchmark standards.

To be eligible for the capital treatment under the ratings benchmark approach, the benchmarks would require a specified amount of prior credit enhancement based on the type of asset securitization involved. Recourse arrangements and direct credit substitutes that fail to satisfy the applicable benchmarks would be grossed-up.[16]

Under the ratings benchmark approach, qualifying prior credit enhancements include: cash collateral accounts,[17] subordinated interests or classes of securities; spread accounts,[18] including those funded initially with a loan repaid from excess cash flow; and other forms of overcollateralization involving excess cash flows (e.g., placing excess receivables into the pool so that total cash flows expected to be received exceed cash flows required to pay investors). These forms of credit enhancement are consistent with the proposal contained in the 1994 Notice which defined prior credit enhancement for the purposes of applying the multi-level ratings based approach.

Consistent with comments received on the 1994 Notice and the types of credit enhancement generally relied on by the ratings agencies in rating asset pools, the agencies would also permit forms of prior credit enhancement involving third-party performance risk. Specifically, the agencies would permit: pool insurance, financial guarantees, and standby letters of credit issued or guaranteed by companies rated or whose debt is rated, in the highest two investment categories by two rating agencies or similar rating organizations. Third party credit enhancements would qualify under the ratings benchmark approach if: (1) the credit enhancement absorbs credit losses before an institution's non-traded position absorbs losses; and (2) the credit enhancement represents an unconditional obligation of the third party providing the enhancement.

c. Computation of Capital Requirements under the Ratings Benchmark Approach. Non-traded positions in asset securitizations meeting the benchmark standards would receive the same capital treatment as investment grade positions under the ratings-based approach (*i.e.,* either the face value treatment or the modified gross-up treatment). Eligible positions would not be subject to the full gross-up treatment.

If the agencies have not developed a ratings benchmark for a specific type of transaction, or if a position in a securitization structure does not qualify under an established benchmark, the non-traded position will be subject to the full gross-up approach, unless it otherwise qualifies for the multi-level treatment under some other approach for non-traded positions ultimately adopted in this rulemaking.

d. Publication of Benchmarks. Initial benchmarks are provided for securitizations backed by residential mortgages, credit cards, auto loans, trade receivables, and commercial real estate. The prior credit enhancement requirements and other pool standards contained in these initial benchmarks have been based on discussions with rating agencies and public information submitted to the agencies in this rulemaking.[19] Public comment is solicited on all aspects of the ratings benchmark approach, including the standards contained in the benchmarks.

If the ratings benchmark approach is adopted, the agencies would update the benchmarks at least once every two years based on a survey of rating agencies. The revisions to the benchmarks for each asset type would be based on the average of the two highest enhancement requirements of the rating agencies responding to a survey.

Additionally, if this approach is adopted, the agencies would establish new benchmarks for additional types of securitizations based on continuing discussions with insured institutions and rating agencies regarding appropriate pool standards and market developments. New benchmarks would be issued only for types of securitizations for which the agencies believe there is a market consensus on: (1) The amount of prior credit enhancement; and (2) the pool standards that such securitization positions generally must satisfy to obtain the equivalent of an ''A'' rating from rating agencies.

The biennial changes to established benchmarks and the addition of new benchmarks would be published for notice and comment in the **Federal Register**. The publication would indicate the amount of credit enhancement required for the type of securitization, and set forth other pool standards and restrictions. After considering any comments, the agencies would publish the revised benchmarks in the **Federal Register**.

e. Implementation. The agencies may adopt all or part of this approach without reproposal, as modified based on comments, in the final rule issued in this rulemaking. In addition, if the agencies adopt this approach in the final rule, they may initially implement the approach on a smaller scale. For example, the approach may initially be limited to use with securitizations backed by residential mortgages, credit card or trade receivables. Non-traded positions in other types of securitizations would either have to qualify for some other approach adopted in the final rule or be subject to the full gross-up approach.

f. Benchmarks. Following are draft initial ratings benchmarks for securitizations backed by residential mortgages, credit cards, automobile loans, trade receivables, and commercial real estate.

[16] If a non-traded position failed to comply with any revised benchmark standards for the specific asset type, the position would be subject to the gross-up approach.

[17] A cash collateral account is a separate account funded with a loan from the provider of the credit enhancement. Funds in the account are available to cover potential losses.

[18] A spread account is typically a trust or special account that the issuer establishes to retain interest rate payments in excess of the sum of the amounts due investors from the underlying assets, plus a normal servicing fee rate. The excess spread serves as a cushion to cover potential losses on the underlying loans.

[19] See Duff and Phelps Credit Rating Company Presentation to Federal Financial Institutions Examinations Council (April 18, 1995). This document is available for public review in the FFIEC public reference room at 2100 Pennsylvania Avenue, NW., Suite 200 Washington, DC. The benchmarks in this document, however, do not purport to reflect the current standards of that company or any specific rating agency.

RESIDENTIAL MORTGAGE-BACKED SECURITIES

Pool Type [1, 2]	''Rating Benchmark'' prior credit enhancement required for ''A'' rating	Pool standards
30-year loans	1.6 percent	Pools include at least 400 loans for each pool type.
15-year loans	0.8 percent	
Adjustable Rate Mortgages (ARMs) (1,5), (2,6).	2.4 percent	No borrower concentration over 3 percent for each pool type.
Hybrid loans (fixed-to-variable).	2.4 percent	
Balloon loans	2.0 percent For no documentation and reduced documentation loans, multiply the above enhancements by 2. For condominiums, two-to-four family, and cooperative apartments, multiply the above enhancements by 2. For B and C loans, multiply the above enhancements by 3. For loan-to-value (LTV) ratios equal to or below 80 percent: —Use above enhancements. —Multiply above enhancements by 2, if there is purchase mortgage insurance (PMI) that brings loans below 80 percent. For LTV ratios above 80 percent, multiply the above enhancements by 4. For the first five years of the securitization, the above enhancement requirement, as a percentage of the outstanding principal, remains fixed. For years six through ten, the enhancement requirement would be multiplied by 0.75. Beyond ten years, the enhancement would be multiplied by 0.5 [3, 4].	

[1] For positions that represent less than 10 percent of the size of the underlying pool of loans, add 20 percent to the enhancement level.
[2] For closed-end second mortgage securities, determine the LTV ratio of the loans in the security and apply the enhancement requirements for the underlying collateral. In addition, change the 15-year enhancement requirement to 1.6 percent due to increased risk of security.
[3] The reduction in the multiplier over time reflects the reduced risk of the mortgage portfolio due to seasoning.
[4] For a six-year old 15-year mortgage-backed security backed by B and C loans that have LTV ratios above 80 percent, the enhancement would be 0.8 percent x 3 x 4 x 0.75 = 7.2 percent.

ASSET-BACKED SECURITIES

Pool Type [1]	''Rating Benchmark'' prior credit enhancement required for ''A'' rating	Pool standards
Credit cards [2]	The higher of 6 percent or 1.2 times lagged charge-off rate [3]	Enhancement has access to excess spread.
Auto Loans:.		
Prime (A type)	7.0 percent	Sellers of automobile loans must have at least three years of historical information.
Sub-prime (B, C, and D types).	The higher of 15.0 percent or 3 times net expected loss rate [4]	Enhancement has access to excess spread.
Trade Receivables	12.0 percent per loan pool [5] (if all sellers of trade receivables are rated 1 or 2) 18.0 percent per loan pool [5] (if any seller of trade receivables is rated 3 or 4 and no lower than 4).	Pools may not have seller concentrations above 5 percent of pool amount.
		Based on Federal Reserve Board rating criteria for trade receivables, each seller must be rated between 1 and 4.
	The above enhancements will remain fixed as a percentage of outstanding principal, with a floor of 3 percent of original principal.	For credit cards and auto loans, pool must be randomly selected and nationally-diversified.

[1] For positions that represent less than 10 percent of the size of the underlying pool of loans, add 20 percent to the credit enhancement level.
[2] Credit cards include home equity lines of credit that are similar to credit card loans.
[3] Lagged charge-off rate is based on the monthly average of past six month's charge-offs, multiplied by twelve, then divided by the average outstanding balance from a year ago.
[4] Net expected loss rate is the monthly average of last quarter's gross default amount netted against recoveries, multiplied by twelve, then divided by the average outstanding loan balance for the last quarter.
[5] Overcollateralization amount would count toward credit enhancement.

COMMERCIAL MORTGAGE-BACKED SECURITIES

Pool type [1]	''Rating Benchmark'' prior credit enhancement required for ''A'' rating	Pool standards
Office	26.0 percent	Debt-service coverage at least 1.25

COMMERCIAL MORTGAGE-BACKED SECURITIES—Continued

Pool type [1]	"Rating Benchmark" prior credit enhancement required for "A" rating	Pool standards
Regional Mall	10.0 percent	Debt-service coverage at least 1.35
Industrial/Anchored Retail	13.0 percent	Debt-service coverage at least 1.35
Multifamily	17.0 percent	Debt-service coverage at least 1.25
	The above enhancements are for pools of loans with loan-to-value ratios less than or equal to 70 percent. For pools of loans with greater than 70 percent loan-to-value ratio, multiply the above enhancements by 1.5.	For each type of pool above: —No borrower concentration over 5 percent of pool amount. —The amortization schedule does not exceed 25 years.
	For pools with property quality below the B level, multiply the above enhancements by 1.5. The above enhancements will remain fixed as a percentage of outstanding principal, with a floor of 3 percent of original principal [2]..	

[1] For positions that represent less than 10 percent of the underlying pool of loans, add 20 percent to the credit enhancement level.
[2] For example, the enhancement for a security containing regional mall loans with an 80 percent LTV ratio and B quality property would be 10 percent x 1.5 x 1.5 = 22.5 percent.

g. Examples. To determine the dollar amount of prior credit enhancement required for a non-traded position of a securitization, the percentages shown in the benchmarks would be applied to the outstanding amount of the underlying loans in the securitization and monitored regularly by the regulatory agencies and by institutions. For example, for residential mortgage loans, the credit enhancement for a non-traded securitization position must be maintained at the outstanding principal level multiplied by 100 percent of the benchmark level for years one through five. For years six through ten, the required enhancement would be set at 75 percent of the benchmark level. For years eleven and beyond the enhancement requirement would be set at 50 percent of the benchmark level.[20]

Example of a Residential Mortgage Securitization. Assume an institution has provided a 3 percent guarantee on a $6 million mezzanine position of a $200 million residential mortgage securitization. The junior position is a $10 million piece held by a second institution. The underlying mortgages are 15-year fixed-rate "B" and "C" residential mortgage loans with no greater than 70 percent loan-to-value ratios (LTV), with no private mortgage insurance. The benchmark requirement would be 0.8 percent (15-year mortgages) times 1 (70 percent LTV ratio) times 3 ("B" and "C" loans) or 2.4 percent of the securitization amount of $200 million, which equals $4.8 million. Since the $10 million junior position exceeds $4.8 million, the guarantee would not be subject to the gross-up approach.

After one year, losses on the pool are $2 million and the size of the pool decreases to $190 million. The benchmark requirement would be 2.4 percent of $190 million or $4.5 million. Since the junior piece of $8 million still exceeds $4.5 million, the guarantee would still not be subject to the gross-up approach.

Example of a Credit Card Securitization. Assume an institution has provided a guarantee for the bottom 15 percent of a $100 million credit card securitization. This bottom position is unrated. A third party provides a cash collateral account of 7 percent or $7 million in front of the unrated position. Because the pool is new, the institution must project the annual loss experience on the pool.[21] In this case, it projects 4 percent. Based on the benchmarks, the 4 percent should be multiplied by 1.2 and then compared with 6 percent to determine which of the two numbers is higher. Since 6 percent is higher, the benchmark requirement becomes 6 percent of $100 million or $6 million. Since the cash collateral account of $7 million exceeds 6 percent of $100 million, the guarantee would receive a risk weight that is lower than under the gross-up approach.

After one year, the pool of credit card loans decreases to $80 million. The experience on these credit card loans indicates that the lagged loss rate of the loans is 7 percent of the pool, not 4 percent as projected. In addition, assume the cash collateral account provided by the third party decreases to $5 million net of excess cash flows and pool losses. The benchmark is the higher of 6 percent or 8.4 percent (1.2 times 7 percent). The 8.4 percent benchmark is applied to the $80 million pool resulting in a required enhancement of $6.7 million. Since this exceeds the $5 million cash collateral account, the gross-up approach would be applied to the guarantee. To avoid the fully-grossed-up treatment, the third party would need to increase the cash collateral account by $1.7 million to $6.7 million.

Example of a Trade Receivable Securitization. Assume an institution has provided a guarantee on the bottom 12 percent portion of an asset-backed commercial paper program. All of the seller programs within the structure are rated 1 or 2 by the regulator. No program within the structure represents more than 5 percent of the pool and each program within the pool has 15 percent overcollateralization. The guarantee on this commercial paper program would not be grossed up because it is well-diversified, all programs are rated 1 or 2, and the overcollateralization exceeds 12 percent.

Assume that after six months, two of the pool's overcollateralization levels decrease to 10 percent and one of the seller programs is rated 3. The guarantee would be subject to the gross-up

[20] The reduction in the required credit enhancement amount over time is due to the reduced credit risk of seasoned mortgage loan pools.

[21] If the institution has experience with this type of pool, then this historical experience should be used to determine the loss rate required to determine the benchmark.

approach for either of two reasons. First, none of the seller programs have 18 percent collateral, which is the new requirement based on the one program that is rated 3. Second, even if the one program was not rated 3, the two programs with 10 percent collateral do not meet the 12 percent collateral requirement for 1- and 2-rated seller programs.

(*Question 9*) What changes, if any, should be made to the amounts of prior credit enhancement and the pool standards required by the agencies' benchmarks? Please provide supporting information, if available.

(*Question 10*) Can the benchmark standards be simplified without unduly relaxing the protection afforded to institutions by these standards?

(*Question 11*) What additional types of pools and securitization transactions are sufficiently standardized and homogenous to permit the agencies to develop reliable benchmarks? Would it be reasonable to handle these securitizations on a case-by-case basis using the best available data from the rating agencies at the time of the securitization?

(*Question 12*) Is the biennial review and update of the benchmarks appropriate?

(*Question 13*) Please comment on ways the agencies could most effectively evaluate and monitor institutions' use of ratings benchmarks in the examination process with the least possible burden on institutions and examiners.

(*Question 14*) Should the agencies adopt both the ratings-based approach and ratings benchmark approach for non-traded positions? Alternatively, should the agencies adopt only one of these approaches for non-traded positions in rated securitizations?

(*Question 15*) If the agencies decide to adopt both approaches, should institutions be given the discretion to elect which of these approaches to use for their non-traded positions? On the other hand, if the agencies adopt the ratings benchmark approach, should the ratings-based approach be used for non-traded positions in securitizations for which a benchmark has not been developed?

(*Question 16*) Please compare the relative financial and operational burdens that would be imposed on institutions by the ratings-based approach and ratings benchmark approach for non-traded positions.

2. Internal Information Approaches

In response to the 1994 Notice, the agencies also received several comments proposing approaches under which an institution would use credit information it has about the underlying assets to set the capital requirement for a position. These commenters observed that evaluating credit risks is a traditional area of bank expertise and that an institution knows its own assets better than anyone else.

The agencies agree that using the information that institutions have about the credit quality of assets underlying a position could, if feasible, be more efficient than any of the ratings-based approaches for assessing capital requirements on non-traded positions. Therefore, the agencies are considering two approaches based on this type of information: the ''historical loss'' approach and the ''bank model'' approach. The agencies may adopt all or part of this historical loss approach in the final rule adopted in this rulemaking without reproposal. Accordingly, the agencies solicit comments and supporting information to aid in their development of the historical loss and bank model approaches.

a. Historical Loss Approach. A principal purpose of regulatory capital is to provide a cushion against unexpected losses. The historical loss approach being considered by the agencies would take unexpected losses over the life of the asset pool into account. These losses may not be taken into account fully in the ratings-based approaches. The historical loss approach, however, bases the risk-based capital treatment for a position in a securitization on the characteristics of the underlying pool of assets, including the variance of losses. This variance is the source of unexpected losses. While the historical loss approach could, in theory, be used for all recourse obligations and direct credit substitutes, the agencies are proposing that the approach initially be applied only to non-traded positions in securitizations with at least one traded position.

To measure the variance of losses on a pool of assets, an institution would have to project the probability distribution of the cumulative losses on the underlying assets over the life of the pool based on historical loss information for assets comparable to those in the pool. Comparability would encompass such factors as credit quality, collateral, and repayment terms. The cumulative losses would be the portion of the assets in the pool that would not be recovered over the life of the pool.

Under this approach, the risk-based capital treatment for a non-traded position would depend on the expected value of losses on the underlying pool, plus a specified number of standard deviations. As a general rule, at the inception of a securitization, the holder or issuer of a non-traded position would determine whether the holder would incur a loss if the cumulative losses on the underlying assets in the pool reached the expected value of losses plus the designated number of standard deviations (e.g., expected loss plus five standard deviations for normal distributions). This determination would consider any available qualifying credit enhancements providing support to the position and the existence of any more junior positions in the securitization.

Thus, the expected value of losses plus the designated number of standard deviations would serve as a boundary. If the holder of a non-traded position would suffer a loss when the level of cumulative losses on the underlying assets in the pool reached this boundary, then the position would receive the gross-up treatment. The institution's capital requirement, however, would be subject to the low-level rule. Otherwise, the position would qualify to be treated in the same manner as traded positions with ratings below ''AAA'' under the multi-level, ratings-based approach. In short, the non-traded position would qualify to use either the face value treatment or the ''modified gross-up'' approach, depending upon which of these proposed alternatives the agencies adopt in their final rules (*see* sections II.C and II.D of this preamble). An institution's estimate of the probability distribution, measurement of the variance, assessment of the support provided by credit enhancements, and determination of the loss exposure on a non-traded position, as well as the resulting risk-based capital treatment of the position, would be subject to review by examiners.

In projecting the probability distribution of the losses on a pool's underlying assets, an institution would need to compile and analyze historical loss information for individual assets that are comparable to those in the pool. This would include considering the size of the losses on individual assets and, depending on the type of credit enhancement supporting the securitization, the amount of time after the origination of the type of assets being securitized when losses generally occur on that asset type. This information may be available from the information the issuer supplies to the rating agencies for their use in rating the securitization's traded positions.

The agencies are proposing that the types of credit enhancement that would qualify to be considered when determining whether the holder of a

non-traded position would incur any losses be the same as those proposed under the ratings benchmark approach. The size or availability of one or more of the credit enhancements in a securitization (e.g., a spread account), however, may vary over time based on the performance of the pool's underlying assets. If such a credit enhancement supports one or more of the positions in a securitization, the institution also would need to consider the shape of the loss curve over the life of the pool that produces cumulative losses over that period equal to the expected value of losses, plus the designated number of standard deviations. In this situation, as a supplement to the general rule cited previously, the size of the credit enhancement that would be available at any point over the life of the pool given the loss curve's indicated level of losses would need to be sufficient to prevent the holder of a non-traded position from suffering a loss in order for the non-traded position to avoid application of the gross-up approach.

As an example of the application of this historical loss approach, assume an institution owns a non-traded $100 subordinated piece of a $1,000 securitized asset pool. A qualifying standby letter of credit issued by a bank will absorb the first $20 of losses for the pool, thereby providing partial protection to the institution's subordinated position. For asset pools of this type, the institution determines that the expected value of losses plus the designated number of standard deviations over the life of the pool is $80. Given the size of the credit enhancement, the institution will sustain a loss of $60 on its subordinated interest if pool losses reach the expected value of losses, plus the designated number of standard deviations. Therefore, the institution's position would be subject to the gross-up approach. Capital would be held for the institution's position plus all more senior positions. After considering the $20 qualifying standby letter of credit (which would be treated as a bank guarantee on part of the pool) and assuming the assets in the pool are risk-weighted at 100 percent, the risk-based capital charge for the subordinated piece would be $78.72 [($20 x 20 percent x 8 percent) + ($980 x 100 percent x 8 percent)].

In contrast, if the expected value of losses plus the designated number of standard deviations over the life of the pool in the preceding example were only $19, the $20 credit enhancement would fully absorb those losses and the institution would not expect to incur any losses on its subordinated position. The institution's position would qualify for the capital treatment applicable to traded investment-grade positions rated below ''AAA.''

Based on discussions with market participants, the agencies believe that those institutions that are active in the securitization business will normally possess historical loss data for assets comparable to those they are securitizing. In this regard, these institutions must be capable of measuring and monitoring the credit risk they have retained or assumed in securitizations to conduct their securitization activities in a safe and sound manner. If an institution were unable to do the statistical analysis necessary to implement this proposed historical loss approach, however, its non-traded positions would be subject to the gross-up approach.

(*Question 17*) Given the varying number of years in the life of a pool for different types of assets, what is the minimum number of years of historical loss data that should be used to project the probability distribution of the cumulative losses on each type of underlying asset pool over the pool's life? If information for the minimum number of years is not available, is it reasonable for institutions to be required to apply the gross-up approach to non-traded positions?

(*Question 18*) How should institutions determine whether the capital requirement for a non-traded position should be changed over time? Should institutions periodically adjust the loss distribution that they used to set their initial capital requirement to reflect actual losses on pool assets over the life of the pool?

(*Question 19*) Is it reasonable for the agencies to use a log normal curve to describe the distribution of losses on a pool of assets? Would another approach be preferable and, if so, why would it be preferable?

(Question 20) Would this approach be applicable to all asset types or are there some asset types with unusual characteristics for which this approach would be inappropriate?

(Question 21) How burdensome would this historical loss approach be for institutions? To what extent is the necessary loss data available? What modifications should the agencies consider making as they develop this approach?

b. *Bank Model Approach.* Commenters on the 1994 Notice suggested that the capital requirements for recourse obligations and direct credit substitutes also could be based on internal risk assessments made by banks holding those positions. Over the past decade, some banking organizations have developed, for their own internal risk management purposes, statistical techniques for quantifying the credit risk in sub-portfolios of credit instruments such as direct credit substitutes. In principle, these ''internal models'' for measuring credit risk could be used in setting capital requirements for direct credit substitutes and possibly other credit positions. Such a system would be broadly consistent with both the internal models approach to capital now being implemented for market risks associated with bank trading activities, as well as with current supervisory policies for evaluating the adequacy of the allowance for loan and lease losses.

Currently, the agencies are uncertain whether an internal model approach is feasible. However, the agencies recognize that the development of an internal model approach to capital for direct credit substitutes, and perhaps for other credit instruments, could have significant benefits. For example, under the ratings approach, a bank's internal risk assessment—if acceptable to supervisors—might substitute for a credit rating, thus reducing costs and delays associated with obtaining credit ratings. Alternatively, an acceptable internal model for measuring credit risk might form the basis for assessing capital requirements on a portfolio basis rather than on an asset-by-asset basis, thus better reflecting a bank's diversification and hedging activities.

The agencies note that securitization activities can create positions that add significantly to the volatility, appropriately measured, of an institution's credit losses. Banks for which such activities are significant should have in place appropriate policies and practices to quantify and manage the credit risk associated with securitization. The agencies, as always, will review the quality of such policies and practices within the context of evaluating the overall quality of a bank's risk management processes.

(Question 22) Is an internal model approach to setting capital requirements for recourse, direct credit substitutes, and other credit instruments currently feasible and, if so, how might it be structured?

(Question 23) Which types of credit activities would be amenable to such an approach?

(Question 24) How could the agencies validate such internal models and their credit risk assessments?

III. Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC

certifies that this proposal will not have a significant impact on a substantial number of small entities. 5 U.S.C. 601 *et seq.* The provisions of this proposal that increase capital requirements are likely to affect large banks almost exclusively. (Small banks are unlikely to be in a position to provide direct credit substitutes in asset securitizations.) Accordingly, a regulatory flexibility analysis is not required.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board does not believe this proposal will have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board's comparison of the applicability section of this proposal with Call Report Data on all existing banks shows that application of the rule to small entities will be the rare exception. Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this rule will not affect such companies.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the FDIC certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Comparison of Call Report data on FDIC-supervised banks to the items covered by the proposal that result in increased capital requirements shows that application of the rule to small entities will be the infrequent exception.

OTS: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant impact on a substantial number of small entities. The proposal is likely to reduce slightly the risk-based capital requirements for recourse obligations and direct credit substitutes, except for some standby letters of credit. Thrifts currently issue few, if any, standby letters of credit. Accordingly, a regulatory flexibility analysis is not required.

IV. Paperwork Reduction Act

Board: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

V. Executive Order 12866

OCC: On the basis of the best information available, the OCC has determined that this proposal is not a significant regulatory action for purposes of Executive Order 12866. However, the impact of any final rule resulting from this proposal will depend on factors for which the agencies do not currently collect industry-wide information, such as the proportion of bank-provided direct credit substitutes that would be rated below investment grade. The OCC therefore welcomes any quantitative information national banks wish to provide about the impact they expect the various portions of this proposal to have if issued in final form.

OTS: The Director of the OTS has determined that this proposal does not constitute a ''significant regulatory action'' under Executive Order 12866. The proposal is likely to reduce slightly the risk-based capital requirements for recourse obligations and direct credit substitutes, except for some standby letters of credit. Thrifts currently issue few, if any, standby letters of credit. As a result, the OTS has concluded that the proposal will have only minor effects on the thrift industry.

VI. OCC and OTS—Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million or more in any one year. Therefore, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this proposal rule will correct certain inconsistencies in the agencies' risk-based capital standards and will allow banking organizations to maintain lower amounts of capital against certain rated recourse obligations and direct credit substitutes.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, appendix A of part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907 and 3909.

2. In part 3, appendix A, section 3, paragraph (b) is amended by adding a new sentence at the end of the introductory text; paragraph (b)(1)(i) and footnote 13 are removed and reserved; paragraph (b)(1)(ii) is revised; paragraph (b)(1)(iii) and footnote 14 are removed and reserved; footnote 16 in paragraph (b)(2)(i) and footnote 17 in paragraph (b)(2)(ii) are revised; and paragraph (d) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(b) * * * However, direct credit substitutes, recourse obligations, and securities issued in connection with asset securitizations are treated as described in section 3(d) of this appendix A.

(1) * * *

(ii) Risk participations purchased in bankers' acceptances.

* * * * *

(2) * * *

(i) * * * [16]* * *

(ii) * * * [17]* * *

* * * * *

(d) *Recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities.* (1) *Definitions.* For purposes of this section 3 of this appendix A:

(i) *Direct credit substitute* means an arrangement in which a national bank assumes, in form or in substance, any risk of credit loss directly or indirectly associated with a third-party asset or other financial claim, that exceeds the national bank's *pro rata* share of the asset or claim. If a national bank has no claim on the asset, then the assumption of any risk of credit loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(A) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(B) Guarantees, surety arrangements, and irrevocable guarantee-type instruments backing financial claims;

(C) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(D) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(E) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than servicer cash advances as defined in section 3(d)(1)(v) of this appendix A), or if the servicer makes or assumes representations and warranties on the loans (other than standard representations and warranties as defined in section 3(d)(1)(vi) of this appendix A).

(ii) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer:

(A) To repay money borrowed by, or advanced to, or for the account of, an account party; or

(B) To make payment on account of any indebtedness undertaken by an account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(iii) *Rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization. An instrument or obligation is rated investment grade if it has received a credit rating that falls within one of the four highest rating categories used by the nationally-recognized statistical rating organization. An instrument or obligation is rated in the highest investment grade category if it has received a credit rating that falls within the highest investment grade category used by the nationally-recognized statistical rating organization.

(iv) *Recourse* means the retention in form or substance of any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of a national bank's claim on the asset. If a national bank has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or to absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(A) Representations and warranties on the transferred assets (other than standard representations and warranties as defined in section 3(d)(1)(vi) of this appendix A);

(B) Retained loan servicing assets if the servicer is responsible for losses associated with the loans serviced (other than a servicer cash advance as defined in section 3(d)(1)(v) of this appendix A);

(C) Retained subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(D) Assets sold under an agreement to repurchase; and

(E) Loan strips sold without direct recourse where the maturity of the transferred loan is shorter than the maturity of the commitment.

(v) *Servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A servicer cash advance is not a recourse obligation or a direct credit substitute if:

(A) The mortgage servicer is entitled to full reimbursement; or

(B) For any one mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(vi) *Standard representations and warranties* means contractual provisions that a national bank extends when it transfers assets (including loan servicing assets), or assumes when it purchases loan servicing assets. To qualify as a standard representation or warranty, a contractual provision must:

(A) Refer to facts that the seller or servicer can verify, and has verified with reasonable due diligence, prior to the time that assets are transferred (or servicing assets are acquired);

(B) Refer to a condition that is within the control of the seller or servicer; or

(C) Provide for the return of assets in the event of fraud or documentation deficiencies.

(vii) *Traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that was rated with a reasonable expectation that, in the near future:

(A) The position would be sold to investors relying on the rating; or

(B) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan or repurchase agreement involving the position.

(2) *Risk-weighted asset amount.* Except as otherwise provided in sections 3(d)(3) and (4) of this appendix A, to calculate the risk-weighted asset amount for a recourse obligation or direct credit substitute, multiply the amount of assets from which risk of credit loss is directly or indirectly retained or assumed, by the appropriate risk weight using the criteria regarding obligors, guarantors, and collateral listed in section 3(a) of this appendix A. For purposes of this section 3(d) of this appendix A, the amount of assets from which risk of credit loss is directly or indirectly retained or assumed means:

(i) For a financial guarantee-type standby letter of credit, surety arrangement, guarantee, or irrevocable guarantee-type instrument, the amount of the assets that the direct credit substitute fully or partially supports;

(ii) For a subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(iii) For mortgage servicing rights that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(iv) For representations and warranties (other than standard representations and warranties), the amount of the assets subject to the representations or warranties;

(v) For loans on lines of credit that provide credit enhancement for the financial obligations of an account party, the amount of the enhanced financial obligations;

(vi) For loans strips, the amount of the loans; and

(vii) For assets sold with recourse, the amount of assets from which risk of credit loss is directly or indirectly retained or assumed, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

(3) *Investment grade recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.* (i) *Eligibility.* A traded position is eligible for the treatment described in this section 3(d)(3) of this appendix A if it has been rated investment grade by a nationally-recognized statistical rating organization. A recourse obligation or direct credit substitute that is not a traded position is eligible for the treatment described in this section 3(d)(3) of this

[16] Participations in performance-based standby letters of credit are treated in accordance with section 3(d) of this appendix A.

[17] Participations in commitments are treated in accordance with section 3(d) of this appendix A.

appendix A if it has been rated investment grade by two nationally-recognized statistical rating organizations, the ratings are publicly available, the ratings are based on the same criteria used to rate securities sold to the public, and the recourse obligation or direct credit substitute provide credit enhancement to a securitization in which at least one position is traded.

(ii) *Highest investment grade.* To calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is rated in the highest investment grade category, multiply the face amount of the position by a risk weight of 20 percent.

(iii) *Other investment grade.*

[Option 1—Face Value Treatment] To calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is rated investment grade, multiply the face amount of the position by a risk weight of 100 percent.

[Option 2—Modified Gross-Up] To calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is rated investment grade, multiply the amount of assets from which risk of credit loss is directly or indirectly retained or assumed by a risk weight of 50 percent.

(4) *Participations.* The risk-weighted asset amount for a participation interest in a direct credit substitute is calculated as follows:

(i) Determine the risk-weighted asset amount for the direct credit substitute as if the bank held all of the interests in the participation.

(ii) Multiply the risk-weighted asset amount determined under section 3(d)(4)(i) of this appendix A by the percentage of the bank's participation interest.

(iii) If the bank is exposed to more than its *pro rata* share of the risk of credit loss on the direct credit substitute (*e.g.*, the bank remains secondarily liable on participations held by others), add to the amount computed under section 3(d)(4)(ii) of this appendix A an amount computed as follows: multiply the amount of the direct credit substitute by the percentage of the direct credit substitute held by others and then multiply the result by the lesser of the risk-weight appropriate for the holders of those interests or the risk weight appropriate for the direct credit substitute.

(5) *Limitations on risk-based capital requirements.* (i) *Low-level recourse.* If the maximum contractual liability or exposure to credit loss retained or assumed by a bank in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not protected against risk of loss by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* To the extent that an asset is included in the calculation of the risk-based capital requirement under this section 3(d) of this appendix A and may also be included as an on-balance sheet asset, the asset is risk-weighted only under this section 3(d) of this appendix A except that mortgage servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes are risk-weighted as on-balance sheet assets and related recourse obligations and direct credit substitutes are risk-weighted under this section 3(d) of this appendix A.

* * * * *

3. In appendix A, Table 2, item 1 under ''100 Percent Conversion Factor'' is revised to read as follows:

* * * * *

Table 2—Credit Conversion Factors For Off-Balance Sheet Items

100 Percent Conversion Factor

1. [Reserved]

* * * * *

Dated: October 22, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831o, 1831p-1,1831 r-1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, section *III*.B. is amended by revising paragraph 3. and in paragraph 4., footnote 24 is redesignated as footnote 28. The revision reads as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

B. * * *

3. *Recourse obligations, direct credit substitutes, and asset -and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations are treated as described below.

(a) *Definitions*— (1) *Direct credit substitute means an arrangement in which a bank assumes,* in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the bank's *pro rata* share of the asset or claim. If the bank has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(i) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(ii) Guarantees, surety arrangements, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial liabilities, or that back off-balance-sheet items against which risk-based capital must be maintained;

(iii) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(v) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph *III*.B.3.(a)(3) of this appendix A), or if the servicer makes or assumes representations and warranties on the loans other than standard representations and warranties as defined in paragraph *III*.B.3.(a)(6) of this appendix A.

(2) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(i) To repay money borrowed by, advanced to, or for the account of, the account party; or

(ii) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(3) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A servicer cash advance is not a recourse obligation or a direct credit substitute if the mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable

advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(4) *Rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization. An instrument or obligation is rated investment grade if it has received a credit rating that falls within one of the four highest rating categories used by the organization, e.g., at least BBB or its equivalent. An instrument or obligation is rated in the highest investment grade if it has received a credit rating that falls within the highest rating category used by the organization.

(5) *Recourse* means an arrangement in which a bank *retains*, in form or in substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(i) Representations and warranties on the transferred assets other than standard representations and warranties as defined in paragraph *III*.B.3.(a)(6) of this appendix A;

(ii) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced other than mortgage servicer cash advances as defined in paragraph *III*.B.3.(a)(3) of this appendix A;

(iii) Retained subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Assets sold under an agreement to repurchase; and

(v) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(6) *Standard representations and warranties* means contractual provisions that a bank extends when it transfers assets (including loan servicing assets) or assumes when it purchases loan servicing assets. To qualify as a standard representation or warranty, a contractual provision must:

(i) Refer to facts that the seller or servicer can verify, and has verified with reasonable due diligence, prior to the time that assets are transferred (or servicing assets are acquired);

(ii) Refer to a condition that is within the control of the seller or servicer; or

(iii) Provide for the return of assets in the event of fraud or documentation deficiencies.

(7) *Traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(i) The position would be sold to investors relying on the rating; or

(ii) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

(b) *Amount of position to be included in risk-weighted assets*—(1) *Determining the credit equivalent amount of recourse obligations and direct credit substitutes.* The credit equivalent amount for a recourse obligation or direct credit substitute (except as otherwise provided in paragraph *III*.B.3.(b)(2) of this appendix A) is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed. This credit equivalent amount is assigned to the risk weight appropriate to the obligor, or if relevant, the guarantor or nature of any collateral. Thus, a bank that extends a partial direct credit substitute, e.g., a standby letter of credit that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for direct credit substitutes that are on-balance sheet, e.g., purchased subordinated securities, banks must maintain capital against the amount of the direct credit substitutes and the full amounts of the assets being supported, *i.e.*, all more senior positions. This treatment is subject to the low-level recourse rule discussed in section *III*.B.3.(c)(1) of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(i) A financial guarantee-type standby letter of credit, surety arrangement, guarantee, or irrevocable guarantee-type instruments, the full amount of the assets that the direct credit substitute fully or partially supports;

(ii) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(iii) Mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(iv) Representations and warranties (other than standard representations and warranties), the amount of the assets subject to the representations or warranties;

(v) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(vi) Loans strips, the amount of the loans;

(vii) For assets sold with recourse, the amount of assets from which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles; and

(viii) Other types of recourse obligations or direct credit substitutes should be treated in accordance with the principles contained in section *III*.B.3. of this appendix A.

(2) *Determining the credit risk weight of investment grade recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities.* A traded position is eligible for the risk-based capital treatment described in this paragraph if it has been rated at least investment grade by a nationally-recognized statistical rating organization. A recourse obligation or direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph if it has been rated at least investment grade by two nationally-recognized statistical rating organizations, the ratings are publicly available, the ratings are based on the same criteria used to rate securities sold to the public, and the recourse obligation or direct credit substitute provides credit enhancement to a securitization in which at least one position is traded.

(i) *Highest investment grade.* Except as otherwise provided in this section *III.* of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the highest investment grade category is assigned to the 20 percent risk category.

(ii) *Other investment grade.* [Option 1—Face Value Treatment] Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated investment grade is assigned to the 100 percent risk category.

[Option 2—Modified Gross-Up] Except as otherwise provided in this section III. of this appendix A, for a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated investment grade, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed by the bank is assigned to the 50 percent risk category, regardless of the face amount of the bank's risk position.

(3) *Risk participations and syndications in direct credit substitutes*—(i) In the case of direct credit substitutes in which a risk participation [23] has been conveyed, the full amount of the assets that are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[24] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository

[23] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[24] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

institution or foreign bank is assigned to the 20 percent risk category.[25]

(ii) The capital treatment for risk participations, either conveyed or acquired, and syndications in direct credit substitutes that are associated with an asset securitization and are rated at least investment grade is set forth in paragraph *III*.B.3.(b)(2) of this appendix A. A lower risk category may be applicable depending upon the obligor or nature of the institution acquiring the participation.

(iii) In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

(iv) In the case of direct credit substitutes that take the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank will only include its pro rata share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[26]

(c) *Limitations on risk-based capital requirements*—(1) *Low-level recourse.* If the maximum contractual liability or exposure to loss retained or assumed by a bank in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(2) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(3) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to this section *III*.B.3. of this appendix A also appears as a balance sheet asset, the balance sheet asset is not included in a bank's risk-weighted assets, except in the case of mortgage servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In such cases, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

(d) *Privately-issued mortgage-backed securities.* Generally, a privately-issued mortgage-backed security meeting certain criteria, set forth in the accompanying footnote,[27] is essentially treated as an indirect holding of the underlying assets, and assigned to the same risk category as the underlying assets, but in no case to the zero percent risk category. However, any class of a privately-issued mortgage-backed security whose structure does not qualify it to be regarded as an indirect holding of the underlying assets or that can absorb more than its *pro rata* share of loss without the whole issue being in default (for example, a so-called subordinated class) is treated in accordance with section *III*.B.3.(b) of this appendix A. Furthermore, all stripped mortgage-backed securities, including interest-only strips (IOs), principal-only strips (POs), and similar instruments, are assigned to the 100 percent risk weight category, regardless of the issuer or guarantor.

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3. In appendix A to part 208, sections *III*.C.1. through 3., footnotes 25 through 37 are redesignated as footnotes 29 through 41 and newly redesignated footnote 39 and section *III*.C.4. are revised to read as follows:

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III. * * *

C. * * *

3. * * *[39] * * *

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4. *Category 4: 100 percent.* (a) All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

(b) This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[42] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[43] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight); and all stripped mortgage-backed securities and similar instruments.

(c) Also included in this category are industrial-development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based

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[25] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[26] For example, if a bank has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the bank's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk weighted assets.

[27] A privately-issued mortgage-backed security may be treated as an indirect holding of the underlying assets provided that: (1) The underlying assets are held by an independent trustee and the trustee has a first priority, perfected security interest in the underlying assets on behalf of the holders of the security; (2) either the holder of the security has an undivided *pro rata* ownership interest in the underlying mortgage assets or the trust or single purpose entity (or conduit) that issues the security has no liabilities unrelated to the issued securities; (3) the security is structured such that the cash flow from the underlying assets in all cases fully meets the cash flow requirements of the security without undue reliance on any reinvestment income; and (4) there is no material reinvestment risk associated with any funds awaiting distribution to the holders of the security. In addition, if the underlying assets of a mortgage-backed security are composed of more than one type of assets, for example, U.S. Government-sponsored agency securities and privately-issued pass-through securities that qualify for the 50 percent risk category, the entire mortgage-backed security is generally assigned to the category appropriate to the highest risk-weighted asset underlying the issue. Thus, in this example, the security would receive the 50 percent risk weight appropriate to the privately-issued pass-through securities.

[39] a. Loans that qualify as loans secured by one- to four-family residential properties or multifamily residential properties are listed in the instructions to the commercial bank call report. In addition, for risk-based capital purposes, loans secured by one- to four-family residential properties include loans to builders with substantial project equity for the construction of one-to four-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest-money deposits. b. The instructions to the call report also discuss the treatment of loans, including multifamily housing loans, that are sold subject to a *pro rata* loss-sharing arrangement. Such an arrangement should be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank. In such a transaction, from the stand-point of the selling bank, the portion of the loan that is treated as sold is not subject to the risk-based capital standards. In connection with sales of multifamily housing loans in which the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a *pro rata* basis, the selling bank must treat these other loss-sharing arrangements in accordance with section *III*.B.3. of this appendix A.

[42] Such assets include all nonlocal-currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local-currency claims on, or guaranteed by, non-OECD central governments that exceed the local-currency liabilities held by subsidiary depository institutions.

[43] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

(d) The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

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4. In appendix A to part 208, the introductory paragraph in section *III*.D. and section *III*.D.1. are revised to read as follows:

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III. * * *

D. Off-Balance Sheet Items

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section *III*.D.1. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[44] Attachment IV to this appendix A sets forth the conversion factors for various types of off-balance-sheet items.

1. *Items with a 100 percent conversion factor.* (a) Except as otherwise provided in section *III*.B.3. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section *III*.B.3. of this appendix A.

(b) Sale and repurchase agreements, if not already included on the balance sheet, and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[45] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

(c) Securities lent by a bank are treated in one of two ways, depending upon whether the lender is at risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if applicable to any collateral delivered to the lending bank the independent custodian acting on the lending bank's behalf. Where a bank is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the bank, the transaction is deemed to be collateralized by cash on deposit in the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225, section III.*B.* is amended by revising paragraph 3. and in paragraph 4., footnote 27 is redesignated as footnote 31. The revision reads as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

*B.** * *

3. *Recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations are treated as described below.

(a) *Definitions*—(1) *Direct credit substitute* means an arrangement in which a banking organization *assumes*, in form or in substance, any risk of credit loss directly or indirectly associated with a *third-party* asset or other financial claim, that exceeds the banking organization's *pro rata* share of the asset or claim. If the banking organization has no claim on the asset, then the assumption of *any* risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(i) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(ii) Guarantees, surety arrangements, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial liabilities, or that back off-balance-sheet items against which risk-based capital must be maintained;

(iii) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(v) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph III.*B*.3.(a)(3) of this appendix A), or if the servicer makes or assumes representations and warranties on the loans other than standard representations and warranties as defined in paragraph III.*B*.3.(a)(6) of this appendix A.

(2) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(i) To repay money borrowed by, advanced to, or for the account of, the account party; or

(ii) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(3) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A servicer cash advance is not a recourse obligation or a direct credit substitute if the mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant advances of the outstanding principal on that loan.

(4) *Rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization. An instrument or obligation is rated investment grade if it has received a credit rating that falls within one of the four highest rating categories used by the organization. An instrument or obligation is rated in the highest investment grade if it has received a credit rating that falls within the highest rating category used by the organization.

(5) *Recourse* means an arrangement in which a banking organization *retains*, in form or in substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a *pro rata* share of the banking organization's claim on the asset. If a banking organization has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a banking organization provides credit enhancement beyond any contractual

[44] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral of the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section *III*.B. of this appendix A.

[45] Forward forward deposits accepted are treated as interest rate contracts.

obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(i) Representations and warranties on the transferred assets other than standard representations and warranties as defined in paragraph III.*B*.3.(a)(6) of this appendix A;

(ii) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced other than mortgage servicer cash advances as defined in paragraph III.*B*.3.(a)(3) of this appendix A;

(iii) Retained subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Assets sold under an agreement to repurchase; and

(v) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(6) *Standard representations and warranties* means contractual provisions that a banking organization extends when it transfers assets (including loan servicing assets) or assumes when it purchases loan servicing assets. To qualify as a standard representation or warranty, a contractual provision must:

(i) Refer to facts that the seller or servicer can verify, and has verified with reasonable due diligence, prior to the time that assets are transferred (or servicing assets are acquired);

(ii) Refer to a condition that is within the control of the seller or servicer; or

(iii) Provide for the return of assets in the event of fraud or documentation deficiencies.

(7) *Traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(i) The position would be sold to investors relying on the rating; or

(ii) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

(b) *Amount of position to be included in risk-weighted assets*—(1) *Determining the credit equivalent amount of recourse obligations and direct credit substitutes.* The credit equivalent amount for a recourse obligation or direct credit substitute (except as otherwise provided in paragraph III.*B*.3.(b)(2) of this appendix A) is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed. This credit equivalent amount is assigned to the risk weight appropriate to the obligor, or if relevant, the guarantor or nature of any collateral. Thus, a banking organization that extends a partial direct credit substitute, e.g., a standby letter of credit that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for direct credit substitutes that are on-balance sheet, e.g., purchased subordinated securities, banking organizations must maintain capital against the amount of the direct credit substitutes and the full amounts of the assets being supported, i.e., all more senior positions. This treatment is subject to the low-level recourse rule discussed in paragraph III.*B*.3.(c)(1) of this appendix A. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(i) A financial guarantee-type standby letter of credit, surety arrangement, guarantee, or irrevocable guarantee-type instruments, the full amount of the assets that the direct credit substitute fully or partially supports;

(ii) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(iii) Mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(iv) Representations and warranties (other than standard representations and warranties), the amount of the assets subject to the representations or warranties;

(v) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(vi) Loans strips, the amount of the loans;

(vii) For assets sold with recourse, the amount of assets from which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles; and

(viii) Other types of recourse obligations or direct credit substitutes should be treated in accordance with the principles contained in paragraph III.*B*.3.(b)(3) of this appendix A.

(2) *Determining the credit risk weight of investment grade recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities.* A traded position is eligible for the risk-based capital treatment described in this paragraph if it has been rated at least investment grade by a nationally-recognized statistical rating organization. A recourse obligation or direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph if it has been rated at least investment grade by two nationally-recognized statistical rating organizations, the ratings are publicly available, the ratings are based on the same criteria used to rate securities sold to the public, and the recourse obligation or direct credit substitute provides credit enhancement to a securitization in which at least one position is traded.

(i) *Highest investment grade.* Except as otherwise provided in section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the highest investment grade category is assigned to the 20 percent risk category.

(ii) *Other investment grade.* [Option 1—Face Value Treatment] Except as otherwise provided in this section III. of this appendix A, the face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated investment grade is assigned to the 100 percent risk category.

[Option 2—Modified Gross-Up] Except as otherwise provided in section III. of this appendix A, for a recourse obligation, direct credit substitute, or an asset or mortgage-backed security that is rated investment grade, the *full* amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed by the banking organization is assigned to the 50 percent risk category, regardless of the face amount of the banking organization's risk position.

(3) *Risk participations and syndications in direct credit substitutes*—(i) In the case of direct credit substitutes in which a risk participation [26] has been conveyed, the full amount of the assets that are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[27] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category.[28]

(ii) The capital treatment for risk participations, either conveyed or acquired, and syndications in direct credit substitutes that are associated with an asset securitization and are rated at least investment grade is set forth in paragraph III.*B*.3.(b)(2) of this appendix A. A lower risk category may be applicable depending upon the obligor or nature of the institution acquiring the participation.

(iii) In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring banking organization's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

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[26] That is, a participation in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[27] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[28] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

(iv) In the case of direct credit substitutes that take the form of a syndication where each banking organization is obligated only for its *pro rata* share of the risk and there is no recourse to the originating banking organization, each banking organization will only include its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[29]

(c) *Limitations on risk-based capital requirements*—(1) *Low-level recourse*. If the maximum contractual liability or exposure to loss retained or assumed by a banking organization in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply to assets sold with implicit recourse.

(2) *Mortgage-related securities or participation certificates retained in a mortgage loan swap*. If a banking organization holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the banking organization continued to hold these loans as an on-balance sheet asset.

(3) *Related on-balance sheet assets*. If a recourse obligation or direct credit substitute subject to section *III*.B.3. of this appendix A also appears as a balance sheet asset, the balance sheet asset is not included in a banking organization's risk-weighted assets, except in the case of mortgage servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In such cases, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

(d) *Privately-issued mortgage-backed securities*. Generally, a privately-issued mortgage-backed security meeting certain criteria, set forth in the accompanying footnote,[30] is essentially treated as an indirect holding of the underlying assets, and assigned to the same risk category as the underlying assets, but in no case to the zero percent risk category. However, any class of a privately-issued mortgage-backed security whose structure does not qualify it to be regarded as an indirect holding of the underlying assets or that can absorb more than its *pro rata* share of loss without the whole issue being in default (for example, a so-called subordinated class) is treated in accordance with section III.*B*.3.(b) of this appendix A. Furthermore, all stripped mortgage-backed securities, including (IOs), principal-only strips (POs), and similar instruments, are assigned to the 100 percent risk weight category, regardless of the issuer or guarantor.

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3. In appendix A to part 225, sections III.*C*.1. through 3., footnotes 28 through 40 are redesignated as footnotes 32 through 44 and section III.*C*.4. is revised to read as follows:

* * * * *

III. * * *

C. * * *

4. *Category 4: 100 percent*. (a) All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

(b) This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[45] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[46] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight); and all stripped mortgage-backed securities and similar instruments.

(c) Also included in this category are industrial-development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

(d) The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

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4. In appendix A to part 225, the introductory paragraph and paragraph 1. in section III.*D*. are revised and footnote 49 is added and reserved to read as follows:

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III. * * *

D. Off-Balance Sheet Items

The face amount of an off-balance sheet item is generally incorporated into the risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in paragraph III.*D*.1. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[47] Attachment IV to this appendix A sets forth the conversion factors for various types of off-balance-sheet items.

1. *Items with a 100 percent conversion factor*. (a) Except as otherwise provided in paragraph III.*B*.3. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit

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[29] For example, if a banking organization has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the banking organization $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk-weighted assets.

[30] A privately-issued mortgage-backed security may be treated as an indirect holding of the underlying assets provided that: (1) the underlying assets are held by an independent trustee and the trustee has a first priority, perfected security interest in the underlying assets on behalf of the holders of the security; (2) either the holder of the security has an undivided *pro rata* ownership interest in the underlying mortgage assets or the trust or single purpose entity (or conduit) that issues the security has no liabilities unrelated to the issued securities; (3) the security is structured such that the cash flow from the underlying assets in all cases fully meets the cash flow requirements of the security without undue reliance on any reinvestment income; and (4) there is no material reinvestment risk associated with any funds awaiting distribution to the holders of the security. In addition, if the underlying assets of a mortgage-backed security are composed of more than one type of assets, for example, U.S. Government-sponsored agency securities and privately-issued pass-through securities that qualify for the 50 percent risk category, the entire mortgage-backed security is generally assigned to the category appropriate to the highest risk-weighted asset underlying the issue. Thus, in this example, the security would receive the 50 percent risk weight appropriate to the privately-issued pass-through securities.

[45] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by subsidiary depository institutions.

[46] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

[47] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral of the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.*B*. of this appendix A.

substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in paragraph III.*B.*3. of this appendix A.

(b) Sale and repurchase agreements, if not already included on the balance sheet, and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[48] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

(c) Securities lent by a banking organization are treated in one of two ways, depending upon whether the lender is at risk of loss. If a banking organization, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if applicable, to any collateral delivered to the lending banking organization or the independent custodian acting on the lending banking organization's behalf. Where a banking organization is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the banking organization, the transaction is deemed to be collateralized by cash on deposit in the banking organization for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

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By order of the Board of Governors of the Federal Reserve System, October 21, 1997.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix A to part 325, section II.B. is amended by revising paragraph 5. to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

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II. Procedures for Computing Risk-Weighted Assets

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B. * * *

5. Recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities. Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations are treated as described in paragraphs B.5.(b) through (e) of this section.

(a) *Definitions.* (i) *Direct credit substitute* means an arrangement in which a bank assumes, in form or in substance, any risk of credit loss directly or indirectly associated with a third-party asset or other financial claim, that exceeds the bank's *pro rata* share of the asset or claim. If the bank has no claim on the asset, then the assumption of any risk of loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(1) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(2) Guarantees, surety arrangements, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial liabilities, or that back off-balance-sheet items against which risk-based capital must be maintained;

(3) Purchased subordinated interests or securities that absorb more than their pro rata share of losses from the underlying assets;

(4) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(5) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than mortgage servicer cash advances as defined in paragraph B.5.(a)(iii) of this section), or if the servicer makes or assumes representations and warranties on the loans other than standard representations and warranties as defined in paragraph B.5.(a)(vii) of this section.

(ii) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by, advanced to, or for the account of, the account party; or

(2) To make payment on account of any indebtedness undertaken by the account party in the event that the account party fails to fulfill its obligation to the beneficiary.

(iii) *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A servicer cash advance is not a recourse obligation or a direct credit substitute if the mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(iv) *Nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers or dealers (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)).

(v) *Rated* means a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that has received a credit rating from a nationally recognized statistical rating organization. A position is rated investment grade if it has received a credit rating that falls within one of the four highest rating categories used by the organization (e.g., at least ''BBB'' or its equivalent). A position is rated in the highest investment grade if it has received a credit rating that falls within the highest rating category used by the organization.

(vi) *Recourse* means an arrangement in which a bank retains, in form or in substance, any risk of credit loss directly or indirectly associated with a transferred asset that exceeds a pro rata share of the bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of loss is recourse. A recourse obligation typically arises when an institution transfers assets and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include, but are not limited to:

(*1*) Representations and warranties on the transferred assets other than standard representations and warranties as defined in paragraph B.5.(a)(vii) of this section;

(*2*) Retained loan servicing assets if the servicer is responsible for losses associated with the loans being serviced other than mortgage servicer cash advances as defined in paragraph B.5.(a)(iii) of this section;

(*3*) Retained subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(*4*) Assets sold under an agreement to repurchase; and

(*5*) Loan strips sold without direct recourse where the maturity of the transferred loan that is drawn is shorter than the maturity of the commitment.

(vii) *Standard representations and warranties* means contractual assurances regarding the nature, quality, and condition of assets that a bank extends when it transfers

[48] Forward forward deposits accepted are treated as interest rate contracts.

assets (including loan servicing assets) or assumes when it purchases loan servicing assets, but only to the extent that the assurances:

(*1*) Refer to facts that the seller or servicer can verify, and has verified with reasonable due diligence, prior to the time that assets are transferred (or servicing assets are acquired);

(*2*) Refer to a condition that is within the control of the seller or servicer; or

(*3*) Provide for the return of assets in the event of fraud or documentation deficiencies.

(*viii) Traded position* means a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is retained, assumed, or issued in connection with an asset securitization and that is rated with a reasonable expectation that, in the near future:

(*1*) The position would be sold to investors relying on the rating; or

(*2*) A third party would, in reliance on the rating, enter into a transaction such as a purchase, loan, or repurchase agreement involving the position.

(b) *Amount of position to be included in risk-weighted assets.* (i) *General rule.* The credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed. This credit equivalent amount is assigned to the risk weight appropriate to the obligor or, if relevant, the guarantor or nature of any collateral. For purposes of this appendix A, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed means for:

(*1*) A financial guarantee-type standby letter of credit, surety arrangement, guarantee, or irrevocable guarantee-type instruments, the full amount of the assets that the direct credit substitute fully or partially supports;

(*2*) A subordinated interest or security, the amount of the subordinated interest or security plus all more senior interests or securities;

(*3*) Mortgage servicing assets that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(*4*) Representations and warranties (other than standard representations and warranties), the amount of the assets subject to the representations or warranties;

(*5*) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party, the full amount of the enhanced financial obligations;

(*6*) Loans strips, the amount of the loans; and

(*7*) For assets sold with recourse, the amount of assets from which risk of loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles.

For example, a bank that extends a partial direct credit substitute, e.g., a financial guarantee-type standby letter of credit that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported. Furthermore, for a recourse obligation or a direct credit substitute that is an on-balance sheet asset, e.g., a retained or purchased subordinated security, a bank must maintain capital against the amount of the on-balance sheet asset plus the full amount of the assets not on the bank's balance sheet that are being supported, *i.e.*, all more senior positions.

(ii) *Determining the credit risk weight of investment grade recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities.* Notwithstanding paragraph B.5.(b)(i) of this section, a traded position is eligible for the following risk-based capital treatment. A recourse obligation or direct credit substitute that is not a traded position also is eligible for the following treatment if it has been rated at least investment grade by two nationally recognized statistical rating organizations, the ratings are publicly available, the ratings are based on the same criteria used to rate securities sold to the public, and the recourse obligation or direct credit substitute provides credit enhancement to a securitization in which there is at least one traded position.

(*1*) *Highest investment grade.* The face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated in the highest investment grade category is assigned to the 20 percent risk category.

(*2*) *Other investment grade.* [Option 1—Face Value Treatment] The face amount of a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated investment grade (but not in the highest investment grade category) is assigned to the 100 percent risk category.

[Option 2—Modified Gross-Up] For a recourse obligation, direct credit substitute, or an asset- or mortgage-backed security that is rated investment grade (but not in the highest investment grade category), the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed by the bank is assigned to the 50 percent risk category, regardless of the face amount of the bank's risk position. For a senior asset-or mortgage-backed security which provides no credit enhancement, this means that the face amount of the security is assigned to the 50 percent risk category.

(iii) *Risk participations and syndications in direct credit substitutes. (1)* In the case of a direct credit substitute in which a risk participation [14] has been conveyed, the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed, in whole or in part, by the direct credit substitute is converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: The risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[15] Any remainder of the credit equivalent amount is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category. [16]

(*2*) The capital treatment for risk participations, either conveyed or acquired, and syndications in direct credit substitutes that are associated with an asset securitization and are rated at least investment grade is set forth in paragraph B.5.(b)(ii) of this section. A lower risk category may be applicable depending on the obligor or nature of the institution acquiring the participation.

(*3*) In the case of a direct credit substitute in which a risk participation has been acquired, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed, in whole or in part, by the direct credit substitute and is converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

(*4*) In the case of a direct credit substitute that takes the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank will only include in its risk-based capital calculation only its *pro rata* share of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed, in whole or in part, by the direct credit substitute. [17]

(c) *Limitations on risk-based capital requirements.* (i) *Low-level recourse.* If the maximum contractual liability or exposure to loss retained or assumed by a bank in connection with a recourse

[14] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[15] A risk participation in a bankers acceptance conveyed to another institution is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[16] A risk participation with a remaining maturity of over one year that is conveyed to a non-OECD bank is to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[17] For example, if a bank has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the bank's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk-weighted assets.

obligation or a direct credit substitute is less than the amount of capital which would be held under the applicable risk-based capital requirement for the enhanced assets, the bank need only hold capital equal to the maximum contractual liability or exposure to loss, less any recourse liability account established in accordance with generally accepted accounting principles. This exception does not apply to assets sold with implicit recourse.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to section II.B.5. of this appendix A also appears as an on-balance sheet asset, the credit equivalent amount of the recourse obligation or direct credit substitute is determined in accordance with paragraph B.5.(b) of this section and the balance sheet asset is not separately included in a bank's risk-weighted assets, except in the case of mortgage servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In such cases, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

(d) *Privately-issued mortgage-backed securities.* Generally, a privately-issued mortgage-backed security meeting certain criteria, set forth in the accompanying footnote, [18] is essentially treated as an indirect holding of the underlying assets, and assigned to the same risk category as the underlying assets, but in no case to the zero percent risk category. However, any class of a privately-issued mortgage-backed security whose structure does not qualify it to be regarded as an indirect holding of the underlying assets or that can absorb more than its *pro rata* share of loss without the whole issue being in default (for example, a so-called subordinated class) is treated in accordance with paragraph B.5.(b) of this section. Furthermore, all privately-issued stripped mortgage-backed securities, including interest-only strips (IOs), principal-only strips (POs), and similar instruments, are assigned to the 100 percent risk weight category, regardless of the issuer or guarantor.

(e) *Other stripped mortgage-backed securities.* All other stripped mortgage-backed securities, including interest-only strips (IOs), principal-only strips (POs), and similar instruments, are assigned to the 100 percent risk weight category, regardless of the issuer or guarantor.

* * * * *

3. In appendix A to part 325, section II.C., *Category 1* through *Category* 3, footnotes 15 through 32 are redesignated as footnotes 19 through 36, the four undesignated paragraphs under *Category 3—50 Percent Risk Weight* are designated as paragraphs a. through d., respectively, and newly redesignated footnote 33 is revised to read as follows:

* * * * *

II. * * *

C. * * *

Category 3—50 Percent Risk Weight. * * *

b. * * * [33] * * *

* * * * *

4. In appendix A to part 325, section II.C., *Category 4—100 Percent Risk Weight* is revised to read as follows:

* * * * *

II. * * *

C. * * *

Category 4—100 Percent Risk Weight. a. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

b. This category includes:

(1) Long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk; [37]

(2) All claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies);

(3) Claims on commercial firms owned by the public sector;

(4) Customer liabilities to the bank on acceptances outstanding involving standard risk claims; [38]

(5) Investments in fixed assets, premises, and other real estate owned;

(6) Common and preferred stock of corporations, including stock acquired for debts previously contracted;

(7) Commercial and consumer loans (except (a) those assigned to lower risk categories due to recognized guarantees or collateral and (b) loans secured by residential property that qualify for a lower risk weight);

(8) All stripped mortgage-backed securities and similar instruments;

(9) Industrial-development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest; and

(10) All obligations of states or political subdivisions of countries that do not belong to the OECD-based group of countries.

c. The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated subsidiaries, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and servicing assets and intangible assets.

* * * * *

5. In appendix A to part 325, section II.D. is amended by redesignating footnotes 38 through 42 as footnotes 41 through 45 and by revising the undesignated introductory

[18] A privately-issued mortgage-backed security may be treated as an indirect holding of the underlying assets provided that: (1) The underlying assets are held by an independent trustee and the trustee has a first priority, perfected security interest in the underlying assets on behalf of the holders of the security; (2) either the holder of the security has an undivided *pro rata* ownership interest in the underlying mortgage assets or the trust or single purpose entity (or conduit) that issues the security has no liabilities unrelated to the issued securities; (3) the security is structured such that the cash flow from the underlying assets in all cases fully meets the cash flow requirements of the security without undue reliance on any reinvestment income; and (4) there is no material reinvestment risk associated with any funds awaiting distribution to the holders of the security. In addition, if the underlying assets of a mortgage-backed security are composed of more than one type of asset, the entire mortgage-backed security is generally assigned to the category appropriate to the highest risk-weighted asset underlying the issue.

[33] The types of loans that qualify as loans secured by multifamily residential properties are listed in the instructions for preparation of the Consolidated Reports of Condition and Income. In addition, from the standpoint of the selling bank, when a multifamily residential property loan is sold subject to a *pro rata* loss sharing arrangement which provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank, that portion of the loan is not subject to the risk-based capital standards. In connection with sales of multifamily residential property loans in which the purchaser of the loan shares in any loss incurred on the loan with the selling institution on other than a *pro rata* basis, the selling bank must treat these other loss sharing arrangements in accordance with section II.B.5. of this appendix A.

[37] Such assets include all nonlocal-currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local-currency claims on, or guaranteed by, non-OECD central governments that exceed the local-currency liabilities held by subsidiary depository institutions.

[38] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

paragraph of section II.D. and section II.D.1. to read as follows:

* * * * *

II. * * *

D. * * *

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section II.D.1. of this appendix A. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[39]

1. *Items With a 100 Percent Conversion Factor.* a. Except as otherwise provided in section II.B.5. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section II.B.5. of this appendix A.

b. Sale and repurchase agreements, if not already included on the balance sheet, and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with drawdown which is certain at a specified future date. These obligations include forward purchases, forward forward deposits placed,[40] and partly-paid shares and securities, but they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

c. Securities lent by a bank are treated in one of two ways, depending on whether the lender is exposed to risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the securities lending transaction is excluded from the risk-based capital calculation. On the other hand, if a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if applicable, to any collateral delivered to the lending bank or the independent custodian acting on the lending bank's behalf. When a bank is acting as a customer's agent in a transaction involving the loan or sale of the customer's securities that is collateralized by cash delivered to the lending bank, the transaction is deemed to be collateralized by cash on deposit with the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities lent or sold and the cash collateral received, and any reinvestment risk associated with the cash collateral is borne by the customer.

* * * * *

6. In appendix A to part 325, Table II—Summary of Risk Weights and Risk Categories is amended under Category 2—20 Percent Risk Weight by adding a new paragraph (13) to read as follows:

* * * * *

Table II—Summary of Risk Weights and Risk Categories

* * * * *

Category 2—20 Percent Risk Weight

* * * * *

(13) The face amount of a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is rated in the highest investment grade category.

* * * * *

7. In appendix A to part 325, Table II—Summary of Risk Weights and Risk Categories is amended under Category 3—50 Percent Risk Weight by adding a new paragraph (6) to read as follows:

* * * * *

Table II—Summary of Risk Weights and Risk Categories

* * * * *

Category 3—50 Percent Risk Weight

* * * * *

[Option 2—Modified Gross-Up] (6) The full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed through a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is rated investment grade (but below the highest investment grade category).

* * * * *

8. In appendix A to part 325, Table III—Credit Conversion Factors for Off-Balance Sheet Items, the item ''100 Percent Conversion Factor'' is revised and a new item ''Credit Conversion for Recourse Obligations and Direct Credit Substitutes'' is added after the item ''Zero Percent Conversion Factor'' to read as follows:

* * * * *

Table III—Credit Conversion Factors for Off-Balance Sheet Items 100 Percent Conversion Factor

100 Percent Conversion Factor

(1) Sale and repurchase agreements, if not already included on the balance sheet.

(2) Forward agreements representing contractual obligations to purchase assets, including financing facilities, with drawdown *certain* at a specified future date.

(3) Securities lent, if the lending bank is exposed to risk of loss.

* * * * *

Credit Conversion for Recourse Obligations and Direct Credit Substitutes

The credit equivalent amount for an off-balance sheet recourse obligation or direct credit substitute:

(1) That is not rated at least investment grade is the full amount of the credit enhanced assets from which risk of loss is directly or indirectly retained or assumed, subject to the low-level recourse rule.

(2) That is rated in the highest investment grade category is its face amount.

(3) That is rated investment grade, but below the highest investment grade category, is [Option 1—Face Value Treatment] its face amount.

[Option 2—Modified Gross-Up] the full amount of the credit enhanced assets from which risk of credit loss is directly or indirectly retained or assumed.

* * * * *

Dated at Washington, D.C., this 16th day of September, 1997. Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828(note).

2. Section 567.1 is amended by removing and reserving paragraph (f), by removing in paragraph (i)(2) including text the phrase ''§ 567.6(a)(vi)'' and adding in lieu thereof the phrase ''§ 567.6(a)(1)(vi)'' and by revising paragraph (kk), to read as follows:

§ 567.1 Definitions.

* * * * *

(kk) *Standby letter of credit.* (1) *Financial guarantee-type standby letter of credit* means any letter of credit or similar arrangement, however named or described, that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(i) To repay money borrowed by, advanced to, or for the account of an account party; or

(ii) To make payment on account of any indebtedness undertaken by an account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(2) *Performance-based standby letter of credit* means any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by a

[39] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral of the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II.B. of this appendix A.

[40] Forward forward deposits accepted are treated as interest rate contracts.

third party in the performance of a nonfinancial or commercial obligation.

* * * * *

3. Section 567.6 is amended by revising paragraphs (a) heading and introductory text, (a)(1) introductory text, and (a)(2) introductory text, removing and reserving paragraphs (a)(2)(i)(A) and (C), revising paragraphs (a)(2)(i)(B) and (a)(3), and adding paragraph (b) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted assets.* Risk-weighted assets equal risk-weighted on-balance sheet assets (as computed under paragraph (a)(1) of this section), plus risk-weighted off-balance sheet items (as computed under paragraph (a)(2) of this section), plus risk-weighted recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities (as computed under paragraph (a)(3) of this section). Assets not included for purposes of calculating capital pursuant to § 567.5 are not included in calculating risk-weighted assets.

(1) *On-balance sheet assets.* Except as provided in paragraph (a)(3) of this section, risk-weighted on-balance sheet assets are computed by multiplying the on-balance sheet asset amount times the appropriate risk weight categories. The risk weight categories for on-balance sheet assets are:

* * * * *

(2) *Off-balance sheet activities.* Except as provided in paragraph (a)(3) of this section, risk-weights for off-balance sheet items are determined by the following two-step process. First, the face amount of the off-balance sheet item must be multiplied by the appropriate credit conversion factor listed in this paragraph (a)(2). This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk weight category using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(1) of this section, *provided* that the maximum risk weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. The following are the credit conversion factors and the off-balance sheet items to which they apply:

(i) * * *

(B) Risk participations purchased in bank acceptances;

* * * * *

(3) *Recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities*—(i) *Risk-weighted asset amount.* Except as otherwise provided in this paragraph (a)(3), to calculate the risk-weighted asset amount for a recourse obligation or a direct credit substitute, multiply the amount of assets from which risk of credit loss is directly or indirectly retained or assumed, by the appropriate risk weight using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(1) of this section. For purposes of this paragraph (a)(3), the amount of assets from which risk of credit loss is directly or indirectly retained or assumed means:

(A) For a financial guarantee-type standby letter of credit, surety arrangement, guarantee, or irrevocable guarantee-type instrument, the amount of assets that the direct credit substitute fully or partially supports;

(B) For a subordinated interest or security, the amount of the subordinated interest or security, plus all more senior interests or securities;

(C) For mortgage servicing rights that are recourse obligations or direct credit substitutes, the outstanding amount of the loans serviced;

(D) For representations and warranties (other than standard representations and warranties), the amount of the assets subject to the representations or warranties;

(E) For loans on lines of credit that provide credit enhancement for the financial obligations of the financial obligations of an account party, the amount of the enhanced financial obligations;

(F) For loans strips, the amount of the loans; and

(G) For assets sold with recourse, the amount of assets from which risk of credit loss is directly or indirectly retained, less any applicable recourse liability account established in accordance with generally accepted accounting principles. Other types of recourse obligations or direct credit substitutes should be treated in accordance with the principles contained in this paragraph (a)(3)(i).

(ii) *Investment grade recourse obligations, direct credit substitutes, and asset-and mortgage-backed securities.*—(A) *Eligibility.* A traded position in an asset-or mortgage-backed securitization is eligible for the treatment described in this paragraph (a)(3)(ii), if it has been rated investment grade by a nationally recognized statistical rating organization. A recourse obligation or direct credit substitute that is not a traded position is eligible for the treatment described in this paragraph (a)(3)(ii) if it has been rated investment grade by two nationally recognized statistical rating organizations, the ratings are publicly available, the ratings are based on the same criteria used to rate securities sold to the public, and the recourse obligation or direct credit substitute provide credit enhancement to a securitization in which at least one position is traded.

(B) *Highest investment grade.* To calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is rated in the highest investment grade category, multiply the face amount of the position by a risk weight of 20 percent.

(C) *Other investment grade.* [Option I—Face Value Treatment] To calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset-or mortgage-backed security that is rated investment grade, multiply the face amount of the position by a risk weight of 100 percent.

[Option II—Modified Gross-Up Treatment] To calculate the risk-weighted asset amount for a recourse obligation, direct credit substitute, or asset-or mortgage backed security that is rated investment grade, multiply the amount of assets from which risk of credit loss is directly or indirectly retained or assumed (*see* paragraphs (a)(3)(i)(A) through (F) of this section), by a risk weight of 50 percent.

(iii) *Participations.* The risk-weighted asset amount for a participation interest in a recourse obligation or direct credit substitute is calculated as follows:

(A) Determine the risk-weighted asset amount for the recourse obligation or direct credit substitute as if the savings association held all of the interests in the participation;

(B) Multiply this amount by the percentage of the savings association's participation interest; and

(C) If the savings association is exposed to more than its *pro rata* share of the risk of credit loss on the recourse obligation or direct credit substitute (*e.g.*, the savings association remains secondarily liable on participations held by others), add to the amount computed under paragraph (a)(3)(iii)(B) of this section, an amount computed as follows: Multiply the amount of the recourse obligation or direct credit substitute by the percentage of the recourse obligation or direct credit substitute held by others and then multiply the result by the lesser of the risk weight appropriate for the holders of those interests or the risk weight appropriate to the recourse obligation or direct credit substitute.

(iv) *Alternative capital computation for small business obligations.*

(A) *Definitions.* For the purposes of this paragraph (a)(3)(iv):

(*1*) *Qualified savings association* means a savings association that:

(*i*) Is well capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in paragraph (a)(3)(iv)(B) of this section; or

(*ii*) Is adequately capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in paragraph (a)(3)(iv)(B) of this section and has received written permission from the OTS to apply that capital calculation.

(*2*) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 12 CFR part 121 pursuant to 15 U.S.C. 632.

(B) *Capital requirement.* With respect to a transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified savings association may elect to include only the amount of its retained recourse in its risk-weighted assets for the purposes of this paragraph (a)(3). To qualify for this election, the savings association must establish and maintain a reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the savings association under the recourse obligation.

(C) *Aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified savings association with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the savings association as described in this paragraph (a)(3), may not exceed 15 percent of the association's total capital computed under § 567.5(c)(4).

(D) *Savings association that ceases to be a qualified savings association or that exceeds aggregate limits.* If a savings association ceases to be a qualified savings association or exceeds the aggregate limit described in paragraph (a)(3)(iv)(C) of this section, the savings association may continue to apply the capital treatment described in paragraph (a)(3)(iv)(B) of this section to transfers of small business loans and leases of personal property that occurred when the association was a qualified savings association and did not exceed the limit.

(E) *Prompt corrective action not affected.* (*1*) A savings association shall compute its capital without regard to this paragraph (a)(3)(iv) of this section for purposes of prompt corrective action (12 U.S.C. 1831o), unless the savings association is adequately or well capitalized without applying the capital treatment described in this paragraph (a)(3)(iv) and would be well capitalized after applying that capital treatment.

(*2*) A savings association shall compute its capital requirement without regard to this paragraph (a)(3)(iv) for the purposes of applying 12 U.S.C. 1381o(g), regardless of the association's capital level.

(v) *Limitations on risk-based capital requirements.*—(A) *Low level recourse.* (*1*) If the maximum contractual liability or exposure to credit loss retained or assumed by a savings association in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced asset, the risk based capital requirement is limited to the maximum contractual liability or exposure to credit loss. For assets sold with recourse, the amount of capital required to support the recourse obligation is limited to the maximum contractual liability or exposure to credit loss less the amount of the recourse liability account established in accordance with generally accepted accounting principles.

(*2*) The low level recourse limitation does not apply to assets sold with implicit recourse.

(B) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a savings association holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation (including consideration of any low level recourse limitation described at paragraph (a)(3)(v)(A) of this section), plus the percentage of the mortgage-related security or participation certificate that is not protected against risk of loss by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the savings association continued to hold these loans as an on-balance sheet asset.

(C) *Related on-balance sheet assets.* To the extent that an asset is included in the calculation of the risk-based capital requirement under this paragraph (a)(3), and may also be included as an on-balance sheet asset under paragraph (a)(1) of this section, the asset shall be risk-weighted only under this paragraph (a)(3) except:

(*1*) Mortgage servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes are risk weighted as on-balance sheet assets under paragraph (a)(1) of this section, and the related recourse obligations and direct credit substitutes are risk-weighted under this paragraph (a)(3); and

(*2*) Purchased subordinated interests that are high quality mortgage-related securities are not subject to risk weighting under this paragraph (a)(3). Rather, the face values of these assets are risk-weighted as on-balance sheet assets under paragraph (a)(1)(ii)(H) of this section.

(vi) *Obligations of subsidiaries.* If a savings association retains a recourse obligation or assumes a direct credit substitute on the obligation of a subsidiary that is not an includable subsidiary, and the recourse obligation or direct credit substitute is an equity or debt investment in that subsidiary under generally accepted accounting principles, the face amount of the recourse obligation or direct credit substitute is deducted for capital under §§ 567.5(a)(2) and 567.9(c). All other recourse obligations and direct credit substitutes retained or assumed by a savings association on the obligations of an entity in which the savings association has an equity investment are risk-weighted in accordance with paragraphs (a)(3)(i) through (v) of this section.

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

(1) *Direct credit substitute* means an arrangement in which a savings association assumes, in form or in substance, any risk of credit loss directly or indirectly associated with a third party asset or other financial claim, that exceeds the savings association's *pro rata* share of the asset or claim. If a savings association has no claim on an asset, then the assumption of any risk of credit loss is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(i) Financial guarantee-type standby letters of credit that support financial claims on the account party;

(ii) Guarantees, surety arrangements, and irrevocable guarantee-type instruments backing financial claims;

(iii) Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party; and

(v) Purchased loan servicing assets if the servicer is responsible for credit losses associated with the loans being serviced (other than a servicer cash advance as defined in this section), or if the servicer makes or assumes

representations and warranties on the loans other than standard representation and warranties as defined in this section.

(2) *Rated* means, with respect to an instrument or obligation, that the instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization. An instrument or obligation is rated investment grade if it has received a credit rating that falls within one of the four highest rating categories used by the organization. An instrument or obligation is rated in the highest investment grade if it has received a credit rating that falls within the highest rating category used by the organization.

(3) *Recourse* means the retention, in form or in substance, of any risk of credit loss directly or indirectly associated with a transferred asset, that exceeds a *pro rata* share of the savings association's claim on the asset. If a savings association has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when an institution transfers its assets and retains an obligation to repurchase the assets, or to absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a savings association provides credit enhancement beyond any contractual obligation to support the assets it has sold. Recourse obligations include, but are not limited to:

(i) Representations and warranties on the transferred assets other than standard representations and warranties as defined in this section;

(ii) Retained loan servicing assets if the servicer is responsible for losses associated with the loans serviced (other than a servicer cash advance as defined in this section);

(iii) Retained subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Assets sold under an agreement to repurchase; and

(v) Loan strips sold without direct recourse where the maturity of the transferred loan is shorter than the maturity of the commitment.

(4) *Servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A servicer cash advance is not a recourse obligation or a direct credit substitute if:

(i) The mortgage servicer is entitled to full reimbursement; or

(ii) For any one residential mortgage loan, nonreimbursed advances are contractually limited to an insignificant amount of the outstanding principal on that loan.

(5) *Standard representations and warranties* mean contractual provisions that a savings association extends when it transfers assets (including loan servicing assets) or assumes when it purchases loan servicing assets. To qualify as a standard representation or warranty, a contractual provision must:

(i) Refer to facts that the seller or servicer can verify, and has verified with reasonable due diligence, prior to the time that assets are transferred (or servicing assets are acquired);

(ii) Refer to a condition that is within the control of the seller or servicer; or

(iii) Provide for the return of assets in the event of fraud or documentation deficiencies.

(6) *Traded position* means a recourse obligation, direct credit substitute, or asset- or mortgage-backed security that is retained, assumed or issued in connection with an asset securitization, and that was rated with a reasonable expectation that, in the near future:

(i) The position would be sold to investors relying on the rating; or

(ii) A third party would, in reliance on the rating, enter into a transaction such as a loan or repurchase agreement involving the position.

Dated: September 3, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Policies on Coverage and Enforcement of Energy Efficiency Requirements for Electric Motors; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

RIN 1904–AA82

Policies on Coverage and Enforcement of Energy Efficiency Requirements for Electric Motors

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

ACTION: Policy Statement.

SUMMARY: The Department of Energy is publishing a statement of policy which provides guidance concerning compliance with provisions of the Energy Policy and Conservation Act (EPCA), as amended, which establishes energy efficiency standards and test procedures for certain commercial and industrial electric motors.

DATES: Effective: September 17, 1997.

ADDRESSES: Any comments or suggestions with respect to this policy statement, as well as requests for further information, should be addressed to the Director, Office of Codes and Standards, EE–43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586-8654.

SUPPLEMENTARY INFORMATION: The following policy statement provides guidance concerning compliance with provisions of the Energy Policy and Conservation Act (EPCA), as amended, which establishes energy efficiency standards and test procedures for certain commercial and industrial electric motors.

Section 340(13)(A) of EPCA defines the term ''electric motor,'' and a rule proposed by the Department of Energy (Department) at 61 FR 60440, November 27, 1996, clarifies this definition. Notwithstanding the definition in EPCA and the proposed clarification, motor manufacturers have expressed residual uncertainty as to whether motors with certain modifications are ''electric motors'' covered under the statute. Consequently, motor manufacturers have requested that the Department provide guidance as to which types of motors are covered under EPCA. Motor manufacturers have also expressed concern about their ability to comply with the statute by October 25, 1997, for some such covered motors, and the impact of compliance on manufacturers of some equipment that incorporates electric motors. Hence, they have requested that the Department delay enforcement of EPCA as to certain motors.

The policy statement that follows addresses these concerns. It is based upon recommendations from motor manufacturers, original equipment manufacturers, energy efficiency advocates, trade associations, testing laboratories, and other government officials, and provides such guidance.

Issued in Washington, DC, on September 17, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Policy Statement:

Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act

I. Introduction

The Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6311, *et seq.*, establishes energy efficiency standards and test procedures for certain commercial and industrial electric motors manufactured (alone or as a component of another piece of equipment) after October 24, 1997, or, in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after October 24, 1999.[1] EPCA also directs the Department of Energy (DOE or Department) to implement the statutory test procedures prescribed for motors, and to require efficiency labeling of motors and certification that covered motors comply with the standards.

Section 340(13)(A) of EPCA defines the term ''electric motor'' based essentially on the construction and rating system in the National Electrical Manufacturers Association (NEMA) Standards Publication MG1. Sections 340(13)(B) and (C) of EPCA define the terms ''definite purpose motor'' and ''special purpose motor,'' respectively, for which the statute prescribes no efficiency standards.

In its proposed rule to implement the EPCA provisions that apply to motors (61 FR 60440, November 27, 1996), DOE has proposed to clarify the statutory definition of ''electric motor,'' to mean a machine which converts electrical power into rotational mechanical power and which: (1) is a general purpose motor, including motors with explosion-proof construction;[2] (2) is a single speed, induction motor; (3) is rated for continuous duty operation, or is rated duty type S–1 (IEC),[3] (4) contains a squirrel-cage or cage (IEC) rotor; (5) has foot-mounting, including foot-mounting with flanges or detachable feet; (6) is built in accordance with NEMA T-frame dimensions, or IEC metric equivalents (IEC); (7) has performance in accordance with NEMA Design A or B characteristics, or equivalent designs such as IEC Design N (IEC); and (8) operates on polyphase alternating current 60-Hertz sinusoidal power, and is (i) rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or (ii) can be operated on 230 volts or 460 volts, or both.

Notwithstanding the clarification provided in the proposed rule, there still appears to be uncertainty as to which motors EPCA covers. It is widely understood that the statute covers ''general purpose'' motors that are manufactured for a variety of applications, and that meet EPCA's definition of ''electric motor.'' Many modifications, however, can be made to such generic motors. Motor manufacturers have expressed concern as to precisely which motors with such modifications are covered under the statute, and as to whether manufacturers will be able to comply with the statute by October 25, 1997 with respect to all of these covered motors. Consequently, motor manufacturers have requested that the Department provide additional guidance as to which types of motors are ''electric motors,'' ''definite purpose motors,'' and ''special purpose motors'' under EPCA. The policy statement that follows is based upon input from motor manufacturers and energy efficiency advocates, and provides such guidance.

[1] The term *manufacture* means ''to manufacture, produce, assemble or import.'' EPCA § 321(10). Thus, the standards apply to motors produced, assembled, imported or manufactured after these statutory deadlines.

[2] Section 342(b)(1) of EPCA recognizes that EPCA's efficiency standards cover ''motors which require listing or certification by a nationally recognized safety testing laboratory.'' This applies, for example, to explosion-proof motors which are otherwise general purpose motors.

[3] Terms followed by the parenthetical ''IEC'' are referred to in the International Electrotechnical Commission (IEC) Standard 34–1. Such terms are included in DOE's proposed definition of ''electric motor'' because DOE believes EPCA's efficiency requirements apply to metric system motors that conform to IEC Standard 34, and that are identical or equivalent to motors constructed in accordance with NEMA MG1 and covered by the statute.

II. Guidelines for Determining Whether a Motor is Covered by EPCA

A. General

EPCA specifies minimum nominal full-load energy efficiency standards for 1 to 200 horsepower electric motors, and, to measure compliance with those standards, prescribes use of the test procedures in NEMA Standard MG1 and Institute of Electrical and Electronics Engineers (IEEE) Standard 112. In DOE's view, as stated in Assistant Secretary Ervin's letter of May 9, 1996, to NEMA's Malcolm O'Hagan, until DOE's regulations become effective, manufacturers can establish compliance with these EPCA requirements through use of competent and reliable procedures or methods that give reasonable assurance of such compliance. So long as these criteria are met, manufacturers may conduct required testing in their own laboratories or in independent laboratories, and may employ alternative correlation methods (in lieu of actual testing) for some motors. Manufacturers may also establish their compliance with EPCA standards and test procedures through use of third party certification or verification programs such as those recognized by Natural Resources Canada. Labeling and certification requirements will become effective only after DOE has promulgated a final rule prescribing such requirements.

Motors with features or characteristics that do not meet the statutory definition of ''electric motor'' are not covered, and therefore are not required to meet EPCA requirements. Examples include motors without feet and without provisions for feet, and variable speed motors operated on a variable frequency power supply. Similarly, multispeed motors and variable speed motors, such as inverter duty motors, are not covered equipment, based on their intrinsic design for use at variable speeds. However, NEMA Design A or B motors that are single speed, meet all other criteria under the definitions in EPCA for covered equipment, and can be used with an inverter in variable speed applications as an additional feature, are covered equipment under EPCA. In other words, being suitable for use on an inverter by itself does not exempt a motor from EPCA requirements.

Section 340(13)(F) of EPCA, defines a ''small electric motor'' as ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG 1–1987.'' Section 346 of EPCA requires DOE to prescribe testing requirements and efficiency standards only for those small electric motors for which the Secretary determines that standards are warranted. The Department has not yet made such a determination.

B. Electrical Features

As noted above, the Department's proposed definition of ''electric motor'' provides in part that it is a motor that ''operates on polyphase alternating current 60-Hertz sinusoidal power, and . . . can be operated on 230 volts or 460 volts, or both.'' In DOE's view, ''can be operated'' implicitly means that the motor can be operated successfully. According to NEMA Standards Publication MG1–1993, section 12.44, ''Variations from Rated Voltage and Rated Frequency,'' alternating-current motors must operate successfully under running conditions at rated load with a variation in the voltage or the frequency up to the following: plus or minus 10 percent of rated voltage, with rated frequency for induction motors;[4] plus or minus 5 percent of rated frequency, with rated voltage; and a combined variation in voltage and frequency of 10 percent (sum of absolute values) of the rated values, provided the frequency variation does not exceed plus or minus 5 percent of rated frequency. DOE believes that, for purposes of determining whether a motor meets EPCA's definition of ''electric motor,'' these criteria should be used to determine when a motor that is not rated at 230 or 460 volts or 60 Hertz can be operated at such voltage and frequency.[5]

NEMA Standards Publication MG1 categorizes electrical modifications to motors according to performance characteristics that include locked rotor torque, breakdown torque, pull-up torque, locked rotor current, and slip at rated load, and assigns design letters, such as Design A, B, C, D, or E, to identify various combinations of such electrical performance characteristics. Under section 340(13)(A) of EPCA, electric motors subject to EPCA efficiency requirements include only motors that fall within NEMA ''Design A and B . . . as defined in [NEMA] Standards Publication MG1–1987.'' As to locked rotor torque, for example, MG1 specifies a minimum performance value for a Design A or B motor of a given speed and horsepower, and somewhat higher minimum values for Design C and D motors of the same speed and horsepower. The Department understands that, under MG1, the industry classifies a motor as Design A or B if it has a locked rotor torque at or above the minimum for A and B but below the minimum for Design C, so long as it otherwise meets the criteria for Design A or B. Therefore, in the Department's view, such a motor is covered by EPCA's requirements for electric motors. By contrast a motor that meets or exceeds the minimum locked rotor torque for Design C or D is not covered by EPCA. In sum, if a motor has electrical modifications that meet Design A or B performance requirements it is covered by EPCA, and if its characteristics meet Design C, D or E it is not covered.

C. Size

Motors designed for use on a particular type of application which are in a frame size that is one or more frame *series* larger than the frame size assigned to that rating by sections 1.2 and 1.3 of NEMA Standards Publication MG 13–1984 (R1990), ''Frame Assignments for Alternating Current Integral-Horsepower Induction Motors,'' are not, in the Department's view, usable in most general purpose applications. This is due to the physical size increase associated with a frame series change. A frame series is defined as the first two digits of the frame size designation. For example, 324T and 326T are both in the same frame series, while 364T is in the next larger frame series. Hence, in the Department's view, a motor that is of a larger frame series than normally assigned to that standard rating of motor is not covered by EPCA. A physically larger motor within the same frame series would be covered, however, because it would be usable in most general purpose applications.

Motors built in a T-frame series or a T-frame size *smaller* than that assigned by MG 13–1984 (R1990) are also considered usable in most general purpose applications. This is because simple modifications can generally be made to fit a smaller motor in place of a motor with a larger frame size assigned in conformity with NEMA MG

[4] For example, a motor that is rated at 220 volts should operate successfully on 230 volts, since 220 + .10(220) = 242 volts. A 208 volt motor, however, would not be expected to operate successfully on 230 volts, since 208 + .10(208) = 228.8 volts.

[5] The Department understands that a motor that can operate at such voltage and frequency, based on variations defined for successful operation, will not necessarily perform in accordance with the industry standards established for operation at the motor's *rated* voltage and frequency. In addition, under the test procedures prescribed by EPCA, motors are to be tested at their rated values. Therefore, in DOE's view a motor that is not rated for 230 or 460 volts, or 60 Hertz, but that can be successfully operated at these levels, must meet the energy efficiency requirements at its rated voltage(s) and frequency. DOE also notes that when a motor is rated to include a wider voltage range that includes 230/460 volts, the motor should meet the energy efficiency requirements at 230 volts or 460 volts.

13. Therefore, DOE believes that such smaller motors are covered by EPCA.

D. Motors With Seals

Some electric motors have seals to prevent ingress of water, dust, oil, and other foreign materials into the motor. DOE understands that, typically, a manufacturer will add seals to a motor that it manufactures, so that it will sell two motors that are identical except that one has seals and the other does not. In such a situation, if the motor without seals is ''general purpose'' and covered by EPCA's efficiency requirements, then the motor with seals will also be covered because it can still be used in most general purpose applications. DOE understands, however, that manufacturers previously believed motors with seals were not covered under EPCA, in part because IEEE Standard 112, ''Test Procedure for Polyphase Induction Motors and Generators,'' prescribed by EPCA, does not address how to test a motor with seals installed.

The efficiency rating of such a motor, if determined with seals installed and when the motor is new, apparently would significantly understate the efficiency of the motor as operated. New seals are stiff, and provide friction that is absent after their initial break-in period. DOE understands that, after this initial period, the efficiency ratings determined for the same motor with and without seals would be virtually identical. To construe EPCA, therefore, as requiring such separate efficiency determinations would impose an unnecessary burden on manufacturers.

In light of the foregoing, the Department believes that EPCA generally permits the efficiency of a motor with seals to be determined without the seals installed. Furthermore, notwithstanding the prior belief that such motors are not covered by EPCA, use of this approach to determining efficiency will enable manufacturers to meet EPCA's standards with respect to covered motors with seals by the date the standards go into effect on October 25, 1997.

III. Discussion of How DOE Would Apply EPCA Definitions, Using the Foregoing Guidelines

Using the foregoing guidelines, the attached matrix provides DOE's view as to which motors with common features are covered by EPCA. Because manufacturers produce many basic models that have many modifications of generic general purpose motors, the Department does not represent that the matrix is all-inclusive. Rather it is a set of examples demonstrating how DOE would apply EPCA definitions, as construed by the above guidelines, to various motor types. By extension of these examples, most motors currently in production, or to be designed in the future, could probably be classified. The matrix classifies motors into five categories, which are discussed in the following passages.

Category I—For ''electric motors'' (manufactured alone or as a component of another piece of equipment) in Category I, DOE will enforce EPCA efficiency standards and test procedures beginning on October 25, 1997.

The Department understands that some motors essentially are relatively simple modifications of generic general purpose motors. Modifications could consist, for example, of minor changes such as the addition of temperature sensors or a heater, the addition of a shaft extension and a brake disk from a kit, or changes in exterior features such as the motor housing. Such motors can still be used for most general purpose applications, and the modifications have little or no effect on motor performance. Nor do the modifications affect energy efficiency.

Category II—For certain motors that are ''definite purpose'' according to present industry practice, but that can be used in most general purpose applications, DOE will generally enforce EPCA efficiency standards and test procedures beginning no later than October 25, 1999.

General Statement

EPCA does not prescribe standards and test procedures for ''definite purpose motors.'' Section 340(13)(B) of EPCA defines the term *definite purpose motor* as ''any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application *and which cannot be used in most general purpose applications.*'' [Emphasis added.] Except, significantly, for exclusion of the italicized language, the industry definition of ''definite purpose motor,'' set forth in NEMA MG1, is identical to the foregoing.

Category II consists of electric motors with horsepower ratings that fall between the horsepower ratings in section 342(b)(1) of EPCA, thermally protected motors, and motors with roller bearings. As with motors in Category I, these motors are essentially modifications of generic general purpose motors. Generally, however, the modifications contained in these motors are more extensive and complex than the modifications in Category I motors. These Category II motors have been considered ''definite purpose'' in common industry parlance, but are covered equipment under EPCA because they can be used in most general purpose applications.

According to statements provided during the January 15, 1997, Public Hearing, Tr. pgs. 238–239, Category II motors were, until recently, viewed by most manufacturers as definite purpose motors, consistent with the industry definition that did not contain the clause ''which cannot be used in most general purpose applications.'' Hence, DOE understands that many manufacturers assumed these motors were not subject to EPCA's efficiency standards. During the period prior and subsequent to the hearing, discussions among manufacturers resulted in a new understanding that such motors are general purpose under EPCA, since they can be used in most general purpose applications. Thus, the industry only recently recognized that such motors are covered under EPCA. Although the statutory definition adopted in 1992 contained the above-quoted definition of ''definite purpose,'' the delay in issuing regulations which embody this definition may have contributed to industry's delay in recognizing that these motors are covered.

The Department understands that redesign and testing these motors in order to meet the efficiency standards in the statute may require a substantial amount of time. Given the recent recognition that they are covered, it is not realistic to expect these motors will be able to comply by October 25, 1997. A substantial period beyond that will be required. Moreover, the Department believes different manufacturers will need to take different approaches to achieving compliance with respect to these motors, and that, for a particular type of motor, some manufacturers will be able to comply sooner than others. Thus, the Department intends to refrain from taking enforcement action for two years, until October 25, 1999, with respect to motors with horsepower ratings that fall between the horsepower ratings in section 342(b)(1) of EPCA, thermally protected motors, and motors with roller bearings. Manufacturers are encouraged, however, to manufacture these motors in compliance with EPCA at the earliest possible date.

The following sets forth in greater detail, for each of these types of motors, the basis for the Department's policy to refrain from enforcement for two years. Also set forth is additional explanation of the Department's understanding as to why manufacturers previously believed intermediate horsepower motors were not covered by EPCA.

Intermediate Horsepower Ratings

Section 342(b)(1) of EPCA specifies efficiency standards for electric motors with 19 specific horsepower ratings, ranging from one through 200 horsepower. Each is a preferred or standardized horsepower rating as reflected in the table in NEMA Standards Publication MG1–1993, paragraph 10.32.4, *Polyphase Medium Induction Motors.* However, an ''electric motor,'' as defined by EPCA, can be built at other horsepower ratings, such as 6 horsepower, 65 horsepower, or 175 horsepower. Such motors, rated at horsepower levels between any two adjacent horsepower ratings identified in section 342(b)(1) of EPCA will be referred to as ''intermediate horsepower motors.'' In the Department's view, efficiency standards apply to every motor that has a rating from one through 200 horsepower (or kilowatt equivalents), and that otherwise meets the criteria for an ''electric motor'' under EPCA, including an electric motor with an intermediate horsepower (or kw) rating.

To date, these motors have typically been designed in conjunction with and supplied to a specific customer to fulfill certain performance and design requirements of a particular application, as for example to run a certain type of equipment. See the discussion in Section IV below on ''original equipment'' and ''original equipment manufacturers.'' In large part for these reasons, manufacturers believed intermediate horsepower motors to be ''definite purpose motors'' that were not covered by EPCA. Despite their specific uses, however, these motors are electric motors under EPCA when they are capable of being used in most general purpose applications.

Features of a motor that are directly related to its horsepower rating include its physical size, and the ratings of its controller and protective devices. These aspects of a 175 horsepower motor, for example, which is an intermediate horsepower motor, must be appropriate to that horsepower, and would generally differ from the same aspects of 150 and 200 horsepower motors, the two standard horsepower ratings closest to 175. To re-design an existing intermediate horsepower electric motor so that it complies with EPCA could involve all of these elements of a motor's design. For example, the addition of material necessary to achieve EPCA's prescribed level of efficiency could cause the size of the motor to increase. The addition of magnetic material would invite higher inrush current that could cause an incorrectly sized motor controller to malfunction, or the circuit breaker with a standard rating to trip unnecessarily, or both. The Department believes motor manufacturers will require a substantial amount of time to redesign and retest each intermediate horsepower electric motor they manufacture.

To the extent such intermediate horsepower electric motors become unavailable because motor manufacturers have recognized only recently that they are covered by EPCA, equipment in which they are incorporated would temporarily become unavailable also. Moreover, re-design of such a motor to comply with EPCA could cause changes in the motor that require re-design of the equipment in which the motor is used. For example, if an intermediate horsepower electric motor becomes larger, it might no longer fit in the equipment for which it was designed. In such instances, the equipment would have to be re-designed. Because these motors were previously thought not to be covered, equipment manufacturers may not have had sufficient lead time to make the necessary changes to the equipment without interrupting its production.

With respect to intermediate horsepower motors, the Department intends to refrain from enforcing EPCA for a period of 24 months only as to such motor designs that were being manufactured prior to the date this Policy Statement was issued. The Department is concerned that small adjustments could be made to the horsepower rating of an existing electric motor, in an effort to delay compliance with EPCA, if it delayed enforcement as to all intermediate horsepower motors produced during the 24 month period. For example, a 50 horsepower motor that has a service factor of 1.15 could be renameplated as a 57″ horsepower motor that has a 1.0 service factor. By making this delay in enforcement applicable only to pre-existing designs of intermediate horsepower motors, the Department believes it has made adequate provision for the manufacture of bona fide intermediate horsepower motor designs that cannot be changed to be in compliance with EPCA by October 25, 1997.

Thermally Protected Motors

The Department understands that in order to redesign a thermally protected motor to improve its efficiency so that it complies with EPCA, various changes in the windings must be made which will require the thermal protector to be re-selected. Such devices sense the inrush and running current of the motor, as well as the operating temperature. Any changes to a motor that affect these characteristics will prevent the protector from operating correctly. When a new protector is selected, the motor must be tested to verify proper operation of the device in the motor. The motor manufacturer would test the locked rotor and overload conditions, which could take several days, and the results may dictate that a second selection is needed with additional testing. When the manufacturer has finished testing, typically the manufacturer will have a third party conduct additional testing. This testing may include cycling the motor in a locked-rotor condition to verify that the protector functions properly. This testing may take days or even weeks to perform for a particular model of motor.

Since it was only recently recognized by industry that these motors are covered by EPCA, in the Department's view the total testing program makes it impossible for manufacturers to comply with the EPCA efficiency levels in thermally protected motors by October 25, 1997, especially since each different motor winding must be tested and motor winding/thermal protector combinations number in the thousands.

Motors With Roller Bearings

Motors with roller bearings fit within the definition of electric motor under the statute. However, because the IEEE Standard 112 Test Method B does not provide measures to test motors with roller bearings installed, manufacturers mistakenly believed such motors were not covered. Under IEEE 112, a motor with roller bearings could only be tested for efficiency with the roller bearings removed and standard ball bearings installed as temporary substitutes. Then on the basis of the energy efficiency information gained from that test, the manufacturer may need to redesign the motor in order to comply with the statute. In this situation, the Department understands that testing, redesigning, and retesting lines of motors with roller bearings, to establish compliance, would be difficult and time consuming.

Categories III, IV and V—Motors not within EPCA's definition of ''electric motor,'' and not covered by EPCA.

Close-Coupled Pump Motors

NEMA Standards Publication MG1–1993, with revisions one through three, Part 18, ''Definite-Purpose Machines,'' defines ''a face-mounting close-coupled pump motor'' as ''a medium alternating-current squirrel-cage induction open or totally enclosed motor, with or without feet, having a shaft suitable for mounting an impeller and sealing

device.'' Paragraphs MG1–18.601–18.614 specify its performance, face and shaft mounting dimensions, and frame assignments that replace the suffix letters T and TS with the suffix letters JM and JP.

The Department understands that such motors are designed in standard ratings with standard operating characteristics for use in certain close-coupled pumps and pumping applications, but cannot be used in non-pumping applications, such as, for example, conveyors. Consequently, the Department believes close-coupled pump motors are definite-purpose motors not covered by EPCA. However, a motor that meets EPCA's definition of ''electric motor,'' and which can be coupled to a pump, for example by means of a C-face or D-flange endshield, as depicted in NEMA Standards Publication MG1, Part 4, ''Dimensions, Tolerances, and Mounting,'' is covered.

Totally-Enclosed Non-Ventilated (TENV) and Totally-Enclosed Air-Over (TEAO) Motors

A motor designated in NEMA MG1–1993, paragraph MG1–1.26.1, as ''totally-enclosed non-ventilated (IP54, IC410)''[6] is ''not equipped for cooling by means external to the enclosing parts.'' This means that the motor, when properly applied, does not require the use of any additional means of cooling installed external to the motor enclosure. The TENV motor is cooled by natural conduction and natural convection of the motor heat into the surrounding environment. As stated in NEMA MG1–1993, Suggested Standard for Future Design, paragraph MG1–1.26.1a, a TENV motor ''is only equipped for cooling by free convection.'' The general requirement for the installation of the TENV motor is that it not be placed in a restricted space that would inhibit this natural dissipation of the motor heat. Most general purpose applications use motors which include a means for forcing air flow through or around the motor and usually through the enclosed space and, therefore, can be used in spaces that are more restrictive than those required for TENV motors. Placing a TENV motor in such common restricted areas is likely to cause the motor to overheat. The TENV motor may also be larger than the motors used in most general purpose applications, and would take up more of the available space, thus reducing the size of the open area surrounding the motor. Installation of a TENV motor might require, therefore, an additional means of ventilation to continually exchange the ambient around the motor.

A motor designated in NEMA MG1–1993 as ''totally-enclosed air-over (IP54, IC417)'' is intended to be cooled by ventilation means external to (i.e., separate and independent from) the motor, such as a fan. The motor must be provided with the additional ventilation to prevent it from overheating.

Consequently, neither the TENV motor nor the TEAO motor would be suitable for most general purpose applications, and, DOE believes they are definite-purpose motors not covered by EPCA.

Integral Gearmotors

An ''integral gearmotor'' is an assembly of a motor and a specific gear drive or assembly of gears, such as a gear reducer, as a unified package. The motor portion of an integral gearmotor is not necessarily a complete motor, since the end bracket or mounting flange of the motor portion is also part of the gear assembly and cannot be operated when separated from the complete gear assembly. Typically, an integral gearmotor is not manufactured to standard T-frame dimensions specified in NEMA MG1. Moreover, neither the motor portion, nor the entire integral gearmotor, are capable of being used in most general purpose applications without significant modifications. An integral gearmotor is also designed for a specific purpose and can have unique performance characteristics, physical dimensions, and casing, flange and shafting configurations. Consequently, integral gearmotors are outside the scope of the EPCA definition of ''electric motor'' and are not covered under EPCA.

However, an ''electric motor,'' as defined by EPCA, which is connected to a stand alone mechanical gear drive or an assembly of gears, such as a gear reducer connected by direct coupling, belts, bolts, a kit, or other means, is covered equipment under EPCA.

IV. Electric Motors That Are Components in Certain Equipment

The primary function of an electric motor is to convert electrical energy to mechanical energy which then directly drives machinery such as pumps, fans, or compressors. Thus, an electric motor is always connected to a driven machine or apparatus. Typically the motor is incorporated into a finished product such as an air conditioner, a refrigerator, a machine tool, food processing equipment, or other commercial or industrial machinery. These products are commonly known as ''original equipment'' or ''end-use equipment,'' and are manufactured by firms known as ''original equipment manufacturers'' (OEMs).

Many types of motors used in original equipment are covered under EPCA. As noted above, EPCA prescribes efficiency standards to be met by all covered electric motors manufactured after October 24, 1997, except that covered motors which require listing or certification by a nationally recognized safety testing laboratory need not meet the standards until after October 24, 1999. Thus, for motors that must comply after October 24, 1997, once inventories of motors manufactured before the deadline have been exhausted, only complying motors would be available for purchase and use by OEMs in manufacturing original equipment. Any non-complying motors previously included in such equipment would no longer be available.

The physical, and sometimes operational, characteristics of motors that meet EPCA efficiency standards normally differ from the characteristics of comparable existing motors that do not meet those standards. In part because of such differences, the Department is aware of two types of situations where strict application of the October 24, 1997 deadline could temporarily prevent the manufacture of, and remove from the marketplace, currently available original equipment.

One such situation is where an original equipment manufacturer uses an electric motor as a component in end-use equipment that requires listing or certification by a nationally recognized safety testing laboratory, even though the motor itself does not require listing or certification. In some of these instances, the file for listing or certification specifies the particular motor to be used. No substitution could be made for the motor without review and approval of the new motor and the entire system by the safety testing laboratory. Consequently, a specified motor that does not meet EPCA standards could not be replaced by a complying motor without such review and approval.

This re-listing or re-certification process is subject to substantial variation from one piece of original equipment to the next. For some equipment, it could be a simple paperwork transaction between the

[6] IP refers to the IEC Standard 34–5: Classification of degrees of protection provided by enclosures for rotating machines. IC refers to the IEC Standard 34–6: Methods of rotating machinery. The IP and IC codes are referenced in the NEMA designations for TENV and TEAO motors in MG1–1993 Part 1, ''Classification According to Environmental Protection and Methods of Cooling,'' as a Suggested Standard for Future Design, since the TENV and TEAO motors conform to IEC Standards. Details of protection (IP) and methods of cooling (IC) are defined in MG1 Part 5 and Part 6, respectively.

safety listing or certification organization and the OEM, taking approximately four to eight weeks to complete. But the process could raise more complex system issues involving redesign of the motor or piece of equipment, or both, and actual testing to assure that safety and performance criteria are met, and could take several months to complete. The completion time could also vary depending on the response time of the particular safety approval agency. Moreover, in the period immediately after October 24, the Department believes wholesale changes could occur in equipment lines when OEMs must begin using motors that comply with EPCA. These changes are likely to be concentrated in the period immediately after EPCA goes into effect on October 24, and if many OEMs seek to re-list or re-certify equipment at the same time, substantial delays in the review and approval process at the safety approval agencies could occur. For these reasons, the Department is concerned that certain end-user equipment that requires safety listing or certification could become unavailable in the marketplace, because an electric motor specifically identified in a listing or certification is covered by EPCA and will become unavailable, and the steps have not been completed to obtain safety approval of the equipment when manufactured with a complying motor.

Second, a situation could exist where an electric motor covered by EPCA is constructed in a T-frame series or T-frame size that is smaller (but still standard) than that assigned by NEMA Standards Publication MG 13–1984 (R1990), sections 1.2 and 1.3, in order to fit into a restricted mounting space that is within certain end-use equipment. (Motors in IEC metric frame sizes and kilowatt ratings could also be involved in this type of situation.) In such cases, the manufacturer of the end-use equipment might need to redesign the equipment containing the mounting space to accommodate a larger motor that complies with EPCA. These circumstances as well could result in certain currently available equipment becoming temporarily unavailable in the market, since the smaller size motor would become unavailable before the original equipment had been re-designed to accommodate the larger, complying motor.

The Department understands that many motor manufacturers and OEMs became aware only recently that the electric motors addressed in the preceding paragraphs were covered by EPCA. This is largely for the same reasons, discussed above, that EPCA coverage of Category II motors was only recently recognized. In addition, the Department understands that some motor manufacturers and original equipment manufacturers confused motors that themselves require safety listing or certification, which need not comply until October 25, 1999, with motors that, while not subject to such requirements, are included in original equipment that requires safety listing or certification. Consequently, motor manufacturers and original equipment manufacturers took insufficient action to assure that appropriate complying motors would be available for the original equipment involved, and that the equipment could accommodate such motors. OEMs involved in such situations may often be unable to switch to motors that meet EPCA standards in the period immediately following October 24. To mitigate any hardship to purchasers of the original equipment, the Department intends to refrain from enforcing EPCA in certain limited circumstances, under the conditions described below.

Where a particular electric motor is specified in an approved safety listing or certification for a piece of original equipment, and the motor does not meet the applicable efficiency standard in EPCA, the Department's policy will be as follows: For the period of time necessary for the OEM to obtain a revised safety listing or certification for that piece of equipment, with a motor specified that complies with EPCA, but in no event beyond October 24, 1999, the Department would refrain from taking enforcement action under EPCA with respect to manufacture of the motor for installation in such original equipment. This policy would apply only where the motor has been manufactured and specified in the approved safety listing or certification prior to October 25, 1997.

Where a particular electric motor is used in a piece of original equipment and manufactured in a smaller than assigned frame size or series, and the motor does not meet the applicable efficiency standard in EPCA, the Department's policy will be as follows: For the period of time necessary for the OEM to re-design the piece of equipment to accommodate a motor that complies with EPCA, but in no event beyond October 24, 1999, the Department would refrain from enforcing the standard with respect to manufacture of the motor for installation in such original equipment. This policy would apply only to a model of motor that has been manufactured and included in the original equipment prior to October 25, 1997.

To allow the Department to monitor application of the policy set forth in the prior two paragraphs, the Department needs to be informed as to the motors being manufactured under the policy. Therefore, each motor manufacturer and OEM should jointly notify the Department as to each motor they will be manufacturing and using, respectively, after October 24, 1997, in the belief that it is covered by the policy. The notification should set forth: (1) The name of the motor manufacturer, and a description of the motor by type, model number, and date of design or production; (2) the name of the original equipment manufacturer, and a description of the application where the motor is to be used; (3) the safety listing or safety certification organization and the existing listing or certification file or document number for which re-listing or re-certification will be requested, if applicable; (4) the reason and amount of time required for continued production of the motor, with a statement that a substitute electric motor that complies with EPCA could not be obtained by an earlier date; and (5) the name, address, and telephone number of the person to contact for further information. The joint request should be signed by a responsible official of each requesting company, and sent to: U.S. Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Codes and Standards, EE–43, Forrestal Building, 1000 Independence Avenue, SW, Room 1J–018, Washington, DC 20585–0121. The Department does not intend to apply this policy to any motor for which it does not receive such a notification. Moreover, the Department may use the notification, and make further inquiries, to be sure motors listed in the notification meet the criteria for application of the policy.

This part of the Policy Statement will not apply to a motor in Category II, discussed above in section III. Because up to 24 months is contemplated for compliance by Category II motors, the Department believes any issues that might warrant a delay of enforcement for such motors can be addressed during that time period.

V. Further Information

The Department intends to incorporate this Policy Statement into an appendix to its final rule to implement the EPCA provisions that apply to motors. Any comments or suggestions with respect to this Policy Statement, as well as requests for further information, should be addressed to the Director, Office of Codes and Standards, EE–43, U.S. Department of Energy, 1000

Independence Avenue, SW,
Washington, DC 20585–0121.

EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO MOTOR CATEGORIES: GENERAL PURPOSE; DEFINITE PURPOSE; AND SPECIAL PURPOSE

Motor modification	Category [7]					Explanation
	I	II	III	IV	V	
A. Electrical Modifications						
1 Altitude	X					General purpose up to a frame series change larger.
2 Ambient	X					General purpose up to a frame series change larger.
3 Multispeed					X	EPCA applies to single speed only.
4 Special Leads	X					
5 Special Insulation	X					
6 Encapsulation				X		Due to special construction.
7 High Service Factor	X					General purpose up to a frame series change larger.
8 Space Heaters	X					
9 WYE Delta Start	X					
10 Part Winding Start	X					
11 Temperature Rise	X					General purpose up to a frame series change larger.
12 Thermally Protected		X				Requires retesting and third party agency approval.
13 Thermostat/Thermistor	X					
14 Special Voltages					X	EPCA applies to motors operating on 230/460 voltages at 60 Hertz.
15 Intermediate Horsepowers		X				Round horsepower according to 10 CFR 431.42 for efficiency.
16 Frequency					X	EPCA applies to motors operating on 230/460 voltages at 60 Hertz.
17 Fungus/Trop Insulation	X					
B. Mechanical Modifications						
18 Special Balance	X					
19 Bearing Temp. Detector	X					
20 Special Base/Feet					X	Does not meet definition of T-frame.
21 Special Conduit Box	X					
22 Auxiliary Conduit Box	X					
23 Special Paint/Coating	X					
24 Drains	X					
25 Drip Cover	X					
26 Ground.Lug/Hole	X					
27 Screens on ODP Enclosure	X					
28 Mounting F1, F2; W1–4; C1, 2.	X					Foot-mounting, rigid base, and resilient base.
C. Bearings						
29 Bearing Caps	X					
30 Roller Bearings		X				Test with a standard bearing.
31 Shielded Bearings	X					
32 Sealed Bearings	X					Test with a standard bearing.
33 Thrust Bearings				X		Special mechanical construction.
34 Clamped Bearings	X					
35 Sleeve Bearings				X		Special mechanical construction.
D. Special Endshields						
36 C Face	X					As defined in NEMA MG–1.
37 D Flange	X					As defined in NEMA MG–1.
38 Customer Defined				X		Special design for a particular application.
E. Seals						
39 Contact Seals	X					Includes lip seals and taconite seals—test with seals removed.
40 Non-Contact Seal	X					Includes labyrinth and slinger seals—test with seals installed.
F. Shafts						
41 Standard Shafts/NEMA MG–1.	X					Includes single and double, cylindrical, tapered, and short shafts.
42 Non Standard Material	X					

EXAMPLES OF MANY COMMON FEATURES OR MOTOR MODIFICATIONS TO ILLUSTRATE HOW THE EPCA DEFINITIONS AND DOE GUIDELINES WOULD BE APPLIED TO MOTOR CATEGORIES: GENERAL PURPOSE; DEFINITE PURPOSE; AND SPECIAL PURPOSE—Continued

Motor modification	Category [7]					Explanation
	I	II	III	IV	V	
G. Fans						
43 Special Material	X					
44 Quiet Design	X					
H. Other Motors						
45 Washdown	X					Test with seals removed.
46 Close-Coupled Pump			X			JM and JP frame assignments.
47 Integral Gear Motor					X	Typically special mechanical design, and not a T-frame; motor and gearbox inseparable and operate as one system.
48 Vertical—Normal Thrust					X	EPCA covers foot-mounting.
49 Saw Arbor				X		Special electrical/mechanical design.
50 TENV			X			Totally-enclosed non-ventilated not equipped for cooling (IP54, IC410).
51 TEAO			X			Totally-enclosed air-over requires airflow from external source (IP54, IC417).
52 Fire Pump	X					When safety certification is not required. See also EPCA § 342(b)(1).
53 Non-Continuous					X	EPCA covers continuous ratings.
54 Integral Brake Motor				X		Integral brake design factory built within the motor.

[7] Category I—General purpose electric motors as defined in EPCA.
Category II—Definite purpose electric motors that can be used in most general purpose applications as defined in EPCA.
Category III—Definite purpose motors as defined in EPCA.
Category IV—Special purpose motors as defined in EPCA.
Category V—Outside the scope of ''electric motor'' as defined in EPCA.

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federal register

Wednesday
November 5, 1997

Part IV

The President

Executive Order 13067—Blocking Sudanese Government Property and Prohibiting Transactions With Sudan

Federal Register
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Wednesday, November 5, 1997

Presidential Documents

Title 3—

The President

Executive Order 13067 of November 3, 1997

Blocking Sudanese Government Property and Prohibiting Transactions With Sudan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code;

I, WILLIAM J. CLINTON, President of the United States of America, find that the policies and actions of the Government of Sudan, including continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, all property and interests in property of the Government of Sudan that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. The following are prohibited, except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order:

(a) the importation into the United States of any goods or services of Sudanese origin, other than information or informational materials;

(b) the exportation or reexportation, directly or indirectly, to Sudan of any goods, technology (including technical data, software, or other information), or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency, except for donations of articles intended to relieve human suffering, such as food, clothing, and medicine;

(c) the facilitation by a United States person, including but not limited to brokering activities, of the exportation or reexportation of goods, technology, or services from Sudan to any destination, or to Sudan from any location;

(d) the performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan;

(e) the grant or extension of credits or loans by any United States person to the Government of Sudan;

(f) any transaction by a United States person relating to transportation of cargo to or from Sudan; the provision of transportation of cargo to or from the United States by any Sudanese person or any vessel or aircraft of Sudanese registration; or the sale in the United States by any person holding authority under subtitle 7 of title 49, United States Code, of any transportation of cargo by air that includes any stop in Sudan; and

(g) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. Nothing in this order shall prohibit:

(a) transactions for the conduct of the official business of the Federal Government or the United Nations by employees thereof; or

(b) transactions in Sudan for journalistic activity by persons regularly employed in such capacity by a news-gathering organization.

Sec. 4. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

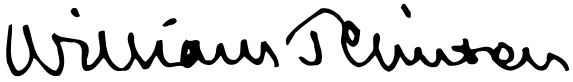
(d) the term ''Government of Sudan'' includes the Government of Sudan, its agencies, instrumentalities and controlled entities, and the Central Bank of Sudan.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, other agencies, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order shall take effect at 12:01 a.m. eastern standard time on November 4, 1997, except that trade transactions under contracts in force as of the effective date of this order may be performed pursuant to their terms through 12:01 a.m. eastern standard time on December 4, 1997, and letters of credit and other financing agreements for such underlying trade transactions may be performed pursuant to their terms.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
November 3, 1997.

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