Federal Register

7–12–00 **Wednesday**
Vol. 65 No. 134 **July 12, 2000**
Pages 42855–43212

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Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–61–AD; Amendment 39–11061; AD 99–05–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; withdrawal.

SUMMARY: This amendment withdraws Airworthiness Directive (AD) 99–05–13, which currently applies to Raytheon Aircraft Company (Raytheon) Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 series airplanes. AD 99–05–13 requires installing a placard on the fuel tank selector to warn of the no-flow condition that exists between the fuel tank detents. Since the issuance of AD 99–05–13, the Federal Aviation Administration (FAA) has re-evaluated all information related to this subject, and determined that the subject matter in this AD is an operational issue and does not address an unsafe condition. Accordingly, this action withdraws AD 99–05–13.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Reports of engine stoppage on Raytheon Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 series airplanes caused FAA to issue AD 99–05–13, Amendment 39–11061 (64 FR 10560, March 5, 1999). AD 99–05–13 currently requires installing a placard on the fuel tank selector to warn of the no-flow condition that exists between the fuel tank detents.

After issuing AD 99–05–13, we re-evaluated all information related to the subject matter of this AD and determined that:

- The positioning of the fuel selector is an operational issue and not an unsafe condition under part 39 of the Federal Aviation Regulations (14 CFR part 39) and should be handled by other methods;
- Normal operating and procedural information such as this should be handled through regular revisions to the Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH); and
- Issuing an AD to require a placard that conveys normal operating information reduces the pilots' sensitivity to true emergency information that should be conveyed by placards.

Consequently, FAA issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to withdraw AD 99–05–13. This proposal published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 30, 2000 (65 FR 16845).

Was the Public Invited to Comment?

The FAA invited interested persons to participate in the making of this amendment. The following describes each comment and presents FAA's response.

Comment Issue No. 1: AD is Valid if an Unsafe Condition Exists

What is the Commenter's Concern?

One commenter states that FAA is withdrawing this AD because it is an operational issue and should be handled by other methods. The commenter believes that the AD is valid because FAA has the authority to issue an AD on any issue as long as an unsafe condition exists.

What is FAA's Response to the Concern?

We concur that we have the authority and responsibility to act on an unsafe condition, regardless of the factors that create the unsafe condition. We were in error in including information in the NPRM specifying that an operational procedure cannot be the subject of an AD. However, we determined that the fuel selector valve, when functioning properly and used properly, does not create an unsafe condition. The FAA determined that the procedures to operate the fuel selector valve are readily available and that our authority is not to issue AD's against aircraft where the operators do not operate the equipment correctly. Utilizing positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 2: AD is Needed for Airplanes Without an AFM/POH

What is the Commenter's Concern?

One commenter states that many airplanes currently affected by AD 99–05–13 are not required to have a POH, and Civil Aviation Regulations (CAR) part 3 allows a manufacturer to use placards instead of an AFM. The commenter believes that, for these reasons, the AD is valid.

What is FAA's Response to the Concern?

We concur that many aircraft do not require a POH and were certificated under CAR part 3 where the use of placards is acceptable over an AFM. However, airplanes in this situation usually only have placards installed that contain safety information when an unusual design, operating, or handling characteristic is prevalent.

The FAA has the authority to issue an AD to require operational placards. However, as discussed above, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 3: Placards Are Necessary to Convey Safe Operation

What is the Commenter's Concern?

One commenter states that the AD is valid because placards are necessary to

convey safe operation for airplanes certificated under the Civil Aviation Regulations and part 23 of the Federal Aviation Regulations (14 CFR part 23). The commenter also states that placards should not be limited to only emergency information.

What is FAA's Response to the Concern?

We concur that placards are not just limited to emergency information. All required placards should convey information for safe operation. However, both CAR 3.777/3.777–1 and 14 CFR 23.1541 state that placards should convey safe operation information if the aircraft has unusual design, operation, or handling characteristics. As discussed previously, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 4: FAA Has Changed the Definition of Unsafe Condition

What is the Commenter's Concern?

One commenter states that, by withdrawing AD 99–05–13, FAA will have changed the historical definition of an unsafe condition. We infer that the commenter wants to maintain the effectiveness of AD 99–05–13.

What is FAA's Response to the Concern?

We do not concur that we have altered the definition of an unsafe condition. Determination of an unsafe condition is based on each individual situation. Factors that are considered include the design, operation, or handling characteristics of the type design airplanes. As discussed above, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

Comment Issue No. 5: Numerous Occurrences Justify the Current AD

What is the Commenter's Concern?

One commenter states that placing a warning placard specifying the safe operation of the fuel selector as AD 99–05–13 requires supports the 49 occurrences from the records of the National Transportation Safety Board (NTSB). We infer that the commenter wants to maintain the effectiveness of AD 99–05–13.

What is FAA's Response to the Concern?

We do not concur with the commenter's assessment. We have reviewed 37 reports of the above-referenced 49 occurrences (commenter only provided 37). Approximately half of the occurrences listed the cause as fuel starvation in combination with the fuel selector not positioned in the detent. The most prevalent cause was failure to follow checklist procedures. In no instance was the pilot's lack of knowledge or understanding of the positioning of the fuel selector listed as the cause of the occurrence.

In addition, NTSB has not recommended that FAA issue an AD on this subject. Therefore, we conclude that the commenter believes NTSB supports the placard requirement, when in fact, NTSB has made no recommendation supporting it. Again, utilizing a positive detent to assure that the fuel valve is fully open to the tank selected is considered a standard design practice in the aircraft industry.

We are not changing the AD action as a result of this comment.

The FAA's Determination

What is FAA's Final Determination on This Issue?

Based on the above information, FAA has determined that there is no need for AD 99–05–13 and that it should be withdrawn.

This action withdraws AD 99–05–13. Withdrawal of AD 99–05–13 will not preclude us from issuing another notice in the future, nor will it commit us to any course of action in the future.

Regulatory Impact

Since this action only withdraws an AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws AD 99–05–13, Amendment 39–11061 (64 FR 10560, March 5, 1999).

Issued in Kansas City, Missouri, on July 5, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–17622 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–30]

Amendment to Class E Airspace; Albion, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Albion, NE.

DATES: The direct final rule published at 65 FR 26126 is effective on 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 5, 2000 (65 FR 26126). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 28, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17610 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–18]

Amendment to Class E Airspace; Hugoton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Hugoton Municipal Airport, Hugoton, KS. A review of the Class E airspace area for Hugoton Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 24, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–18, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Hugoton, KS. A review of the Class E airspace for Hugoton Municipal Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Hugoton Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response t this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 00–ACE–18.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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 Federal Aviation Administration Order 7400.9G, Airspace Designations and reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE KS E5 Hugoton, KS [Revised]

Hugoton Municipal Airport, KS
(Lat. 37°09′47″ N., long. 101°22′14″ W.)
Hugoton NDB
(Lat. 37°09′49″ N., long. 101°22′29″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of Hugoton Municipal Airport and with 2.6 miles each side of the 199° bearing from the Hugoton NDB extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 28, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17609 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–17]

Amendment to Class E Airspace; McPherson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at McPherson Airport, McPherson, KS. A review of the Class E airspace area for McPherson Airport indicates it does not comply with the criteria for 700 feet Above Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 24, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–17, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at McPherson, KS. A review of the Class E airspace for McPherson Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at McPherson Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse no negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, and adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic,

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 00–ACE–17.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect 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, it is determined that final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air.)

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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 Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE KS E5 McPherson, KS [Revised]

McPherson Airport, KS
(Lat. 38°21′09″ N., long. 97°41′29″ W.
McPherson NDB
(Lat. 38°20′54″ N., long. 97°41′14″ W.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of McPherson Airport and within 2.6 miles each side of the 209° bearing from the McPherson Airport extending from the 6.5-mile radius to 10.5 miles southwest of the airport and within 2.6 miles each side of the 359° bearing from the McPherson NDB extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on June 29, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–17608 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–14]

Revision of Class E Airspace; Walnut Ridge, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Walnut Ridge, AR. The development of a VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Walnut Ridge Regional Airport, Walnut Ridge, AR, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Walnut Ridge Regional Airport, Walnut Ridge, AR.

DATES: Effective 0901 UTC, October 5, 2000. Comments must be received on or before August 28, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–14, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Walnut Ridge, AR. The development of a VOR or GPS SIAP, at Walnut Ridge Regional Airport, Walnut Ridge, AR, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Walnut Ridge Regional Airport, Walnut Ridge, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or

negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addresed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–ASW–15.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation: (a) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASW AR E5 Walnut Ridge, AR [Revised]

Walnut Ridge Regional Airport, AR
(Lat. 36°07′31″N., long. 90°55′29″ W.)
Walnut Ridge VORTAC
(Lat. 36°06′36″ N., long. 90°57′13″ W.)
Pocahontas, Nick Wilson Field, AR
(Lat. 36°14′44″ N., long. 90°57′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Walnut Ridge Regional Airport and within 2.5 miles each side of the 235° radial of the Walnut Ridge VORTAC extending from the 6.7-mile radius to 8.8 miles southwest of the airport and within a 7.8-mile radius of Nick Wilson Field.

* * * * *

Issued in Fort Worth, TX, on June 30, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Soutwest Region.

[FR Doc. 00–17607 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–11]

Revocation of Class E Airspace, Freeport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revokes the Class E Airspace at Freeport, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 21302 is effective 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 21, 2000, (65 FR 21302). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 30, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–17606 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN65–01–7290a; FRL–6712–7]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a State Implementation Plan (SIP) revision for the State of Minnesota which was submitted on December 7, 1999. This SIP revision is to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. The accompanying support documents for the Administrative Order, such as the air dispersion modeling, remain in the SIP as they are now.

If EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This rule will be effective September 11, 2000, unless EPA receives adverse or critical comments by August 11, 2000. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328 before visiting the Region 5 Office.)

A copy of these SIP revisions is available for inspection at this Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

A. What Action Is EPA Taking?

In this action EPA is approving the revision to Minnesota's SIP to remove Commercial Asphalt's Administrative Order from the SIP and replace it with a federally enforceable State operating permit.

B. Why Was This SIP Revision Submitted?

This action is intended to streamline the permitting process in Minnesota and, thereby, reduce the permitting burden both on sources within the State and on the Minnesota Pollution Control Agency (MPCA).

C. What Changes Will This Revision Create?

The only thing changing in the SIP is the enforceable document from the Administrative Order to the federally enforceable State operating permit.

D. What Is a Federally Enforceable State Operating Permit and How Does It Work?

On May 2, 1995, the MPCA's revised operating permit rule was approved by EPA as a federally enforceable State operating permit program (FESOP) (60 FR 21447). Two things make the process of allowing State permits to act as the enforceable documents containing SIP requirements possible in Minnesota.

First, Minnesota's operating permit program requires all State permits, not only Title V permits, to contain all applicable requirements. Second, permits submitted as site-specific SIPS will have non-expiring SIP conditions (denoted as ''Title I conditions''). For Federal approvability, any State requirement that is submitted as a revision to the federally enforceable SIP must be non-expiring or permanent.

EPA approved the use of the term ''Title I condition'' and its use as indicating that a condition will not expire even if the permit containing that condition expires. The use of the term, ''Title I condition'' in State operating permits or, subsequently, Title V permits, makes the requirements permanent, and allows Minnesota the use of State operating permits or Title V permits as vehicles for SIP conditions. The State defines ''Title I conditions'' as:

''Any condition based on a source specific determination of ambient impacts imposed for the purpose of achieving or maintaining attainment with the national ambient air quality standard and which was part of a SIP approved by EPA or submitted to EPA and pending approval under section 110 of the ACT.''

All SIP requirements in Commercial Asphalt's permit are cited as ''Title I condition'' SIP for PM10.

E. What Is an Administrative Order?

MPCA has and non-expiring Administrative Orders as the federally enforceable documents in nonattainment SIPs. An Administrative Order contains the emission limits, operating conditions, monitoring, recordkeeping, and reporting requirements that the source must meet in order for the area to attain and maintain the National Ambient Air Quality Standards.

F. How Are Administrative Orders Replaced by Federally Enforceable State Operating Permits?

MPCA submitted its operating permit rules into the SIP so that permits issued pursuant to these rules could be considered federally enforceable documents for imposing emission limitations on culpable sources in nonattainment areas. Using permits replaces the MPCA's past practice of issuing an Administrative Order to such sources. EPA approved in concept the use of such permits in lieu of Administrative Orders, but noted that the permits and SIP submittals must be reviewed on a case-by-case basis.

G. What Is EPA's Final Determination?

Based on the rationale set forth above and in EPA's Technical Support Document, we are approving the removal of Commercial Asphalt's Administrative Order from the SIP and its replacement with a federally enforceable State operating permit. The removal of the Administrative Order does not affect the integrity of this source's site-specific SIP as the remaining conditions, listed as ''Title I conditions'' in the State operating permit, contain the necessary emission limits, as well as the monitoring, recordkeeping, and reporting requirements to enforce those limits.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed.

This action will be effective September 11, 2000 without further notice unless relevant adverse comments are received by August 11, 2000. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 11, 2000.

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

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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 entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Title 40 of Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(54) On December 7, 1999, the State of Minnesota submitted to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. EPA approved a federally enforceable State operating permit (FESOP)(60 FR 21447) for the State of Minnesota on May 2, 1995.

(i) Incorporation by reference

(A) Air Emission Permit No. 12300347–002, issued by the MPCA to Commercial Asphalt CO-Plant 905, on September 10, 1999. Title I conditions only.

[FR Doc. 00–17347 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301018; FRL–6595–1]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of bifenthrin in or on caneberry subgroup, grape, head lettuce and peppers, bell and non-bell. The Interregional Research Project (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 12, 2000. Objections and requests for hearings, identified by docket control number OPP–301018 must be received by EPA on or before September 11, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301018 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–7610; and e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301018. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 22, 1999 (64 FR 71772) (FRL–6396–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP) for tolerances by IR–4, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. This notice included a summary of the petitions prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.442 be amended by establishing tolerances for residues of the insecticide bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on the following commodities:

(1) PP 9E6016 proposed a tolerance for grape at 0.2 ppm.

(2) PP 9E6030 proposed a tolerance for peppers, bell and non-bell at 0.5 ppm.

(3) PP 9E6031 proposed a tolerance for head lettuce at 2.0 ppm, subsequently revised in this final rule to 3.0 ppm.

(4) PP 9E6034 proposed a tolerance for the caneberry at 1.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of bifenthrin on caneberry subgroup at 1.0 ppm, grape at 0.2 ppm, head lettuce at 3.0 ppm, and peppers, bell and non-bell at 0.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bifenthrin are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY

Guideline No./Study Type	Results
870.3700a Prenatal developmental in rodents.	Maternal NOAEL = 1 mg/kg/day LOAEL = 2 mg/kg/day based on tremors Developmental NOAEL = 1 mg/kg/day LOAEL = 24 mg/kg/day based on increased incidence of hydroureter
870.3700b Prenatal developmental in non-rodents.	Maternal NOAEL = 2.67 mg/kg/day LOAEL = 4 mg/kg/day based on head and forelimb twitching No Developmental effects observed

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

Guideline No./Study Type	Results
870.3800 Reproduction and fertility effects.	Parental/Systemic NOAEL = 3 mg/kg/day LOAEL = 5 mg/kg/day Reproductive NOAEL = 5 mg/kg/day LOAEL = no reproductive effects observed at the highest dose tested (5 mg/kg/day) Offspring NOAEL = 5 mg/kg/day LOAEL = no adverse effects observed at the highest dose tested (5 mg/kg/day)
870.4100b Chronic toxicity dogs.	NOAEL = 1.5 mg/kg/day LOAEL = 3 mg/kg/day based on increased incidence of tremors in both sexes
870.4200 Carcinogenicity rats.	NOAEL = 2.5 mg/kg/day LOAEL = 5 mg/kg/day based on increased incidence of tremors in both sexes and possible increases in organ-to-body weight ratios in males. There was no evidence of carcinogenicity.
870.4300 Carcinogenicity mice.	NOAEL = 2.5 mg/kg/day LOAEL = 10 mg/kg/day based on incidence of tremors in both sexes. Carcinogenic potential was evidenced by statistically significant increased trend for hemangiopericytomas in the urinary bladders of males, a significant dose-related trend for combined hepatocellular adenomas and carcinomas in males, and a significantly higher incidence of combined lung adenomas and carcinomas in females.
Gene Mutation.	A gene mutation in Salmonella (Ames) was negative.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

Guideline No./Study Type	Results
Cytogenetics.	Chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells were negative.
Other Effects.	HGPRT locus mutation in mouse lymphoma cells and unscheduled DNA synthesis in rat hepatocytes were negative.
870.7485 Metabolism and pharmacokinetics.	Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. There was an accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, bifenthrin was rapidly metabolized and excreted. Unchanged bifenthrin is the major residue component of toxicological concern in meat and milk.
870.7600 Dermal penetration.	Dermal absorption rate is 25%

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary general population including infants and children.	NOAEL =1.0 mg/kg/day UF = 100 ..... Acute RfD = 0.01 mg/kg/day ..... FQPA SF = 1X	aPAD = acute RfD ÷ FQPA SF = 0.01 mg/kg/day	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing
Chronic Dietary all populations.	NOAEL= 1.5 mg/kg/day UF = 100 ..... Chronic RfD = 0.015 mg/kg/day	cPAD = chronic RfD ÷ FQPA SF = 0.015 mg/kg/day	Dog chronic feeding LOAEL = 3 mg/kg/day based on tremors in both sexes

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BIFENTHRIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-Term Dermal (1 to 7 days) (Residential).	Oral NOAEL= 1.0 mg/kg/day (dermal absorption rate = 25%)	LOC for MOE = 100 (Residential)	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing
Intermediate-Term Dermal (1 week to several months) (Residential).	Oral study NOAEL = 1.0 mg/kg/day (dermal absorption rate = 25%	LOC for MOE = 100 (Residential)	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing
Long-Term Dermal (several months to lifetime) (Residential).	Oral study NOAEL = 1.5 mg/kg/day (dermal absorption rate = 25% when appropriate)	LOC for MOE = 100 (Residential)	Dog chronic feeding LOAEL = 3 mg/kg/day based on tremors in both sexes
Long-Term Inhalation (several months to lifetime) (Residential).	Oral study NOAEL = 1.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Rat developmental LOAEL = 2 mg/kg/day based on tremors in dams during and post dosing (No appropriate inhalation studies available.)
Cancer (oral, dermal, inhalation).	Dietary/Dermal/Inhalation Exposure Group C carcinogen	RfD approach	Mouse Carcinogenicity, urinary bladder tumors in male mice.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin, in or on a variety of raw agricultural commodities including tolerances on plants ranging from 0.05 ppm for corn grain (field, seed, and pop) to 10 ppm on dried hops. Tolerances are also established on animal commodities ranging from 0.05 ppm on eggs to 1.0 ppm in milk fat (reflecting 0.1 ppm in whole milk). Risk assessments were conducted by EPA to assess dietary exposures from bifenthrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: In this acute analysis, probabilistic Monte Carlo analysis (Tier 3) was used. For those foods identified by EPA as single-serving commodities, the Monte Carlo simulation is based on iterative sampling from individual residue values from field trial data reflecting maximum application rates and minimum preharvest intervals. For those foods considered to be blended or processed, mean field trial residues were calculated. For those samples which contained residues at or below the limit of detection (LOD), ½ of the LOD was used. It was assumed that 100% of the following crops were treated with bifenthrin: artichoke, bananas, Brassica vegetable, caneberry, canola, citrus, cucurbits, eggplants, garden peas, grape, head lettuce, lima beans, peanuts, pears, peppers, potatoes, snap beans, and sweet corn. Processing factors for grapes were calculated using concentration factors (grape juice = 1.2X, raisins = 4.2X). Secondary residues for meat and milk were not affected by adding the uses on peppers, lettuce, grape, and caneberry since no animal feed items are associated with these crops.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residue values which were determined from field trial data conducted at maximum label conditions of maximum application rates and minimum preharvest intervals. Mean anticipated residue values were calculated. One hundred percent of crop treated was assumed for all crops except hops (43%) and cottonseed-oil and cottonseed-meal (4%). Secondary residues for meat and milk were not affected by the new proposed uses.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To

provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenthrin may be applied in a particular area.

2.*Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for bifenthrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of bifenthrin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in ground water (SCI-GROW) model, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of the Reference dose or percent of the population adjusted dose. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to bifenthrin they are further discussed in the aggregate risk sections below.

Based on the GENEEC and the SCI-GROW models the EECs of bifenthrin in surface water and ground water for acute exposures are estimated to be 0.10 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.032 ppb for surface water and 0.006 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Bifenthrin is currently registered for use on the following residential non-dietary sites: lawns to control flea infestation, pets and as a termiticide. Registered termiticide use of bifenthrin constitutes a chronic exposure scenario, however, the exposure is considered negligible, considering the application technique of the termiticide use (buried underground) and the fact that vapor pressure of bifenthrin is extremely low. The Agency conducted a residential exposure assessment for the lawn care uses of bifenthrin. This risk assessment is based on post-application to treated lawns (turf use), a worst case scenario estimate of residential exposure. An assessment of applicator exposure was not included since the registered products are primarily limited to commercial use and, therefore, applied by professional lawn care operators. Inhalation, dermal and oral non-dietary routes of exposure were evaluated by this short- and intermediate-term risk assessment. For adults, the routes of exposure from these registered residential uses include dermal and inhalation, and for infants and children, the routes of exposure include dermal, inhalation, and oral (non-dietary).

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether bifenthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bifenthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bifenthrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism

of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *Safety factor for infants and children*—i. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies*. See summary of developmental toxicity studies in Unit IIIA. Toxicological Profile.

iii. *Reproductive toxicity study*. See summary of reproduction toxicity studies in Unit IIIA. Toxicological profile.

iv. *Conclusion*. There is a complete toxicity data base for bifenthrin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA Safety Factor for enhanced sensitivity of infants and children was reduced from 10X to 1X.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD – (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the U.S. EPA's Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary (food only) exposure to bifenthrin will occupy 60% of the aPAD for the U.S. population, 40% of the aPAD for females 13 years and older, 75% of the aPAD for infants (<1 year old) and 99.7% of the aPAD for children (1 to 6 years old). In addition, there is potential for acute dietary exposure to bifenthrin in drinking water. Despite this potential and after calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BIFENTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.01	60	0.10	0.006	140
Females 13 years and older	0.01	40	0.10	0.006	180
children (1 to 6 years old)	0.01	99.7	0.10	0.006	0.3

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenthrin from food will utilize 3.0% of the cPAD for the U.S. population, and 8.2% of the cPAD for children (1 to 6 years old), the subpopulation at greatest risk. Bifenthrin is also registered for residential use on outdoor lawn/gardens, inside households, pets and as a termiticide. Based on the use pattern, chronic residential exposure to residues of the bifenthrin is not expected. In addition, there is potential for chronic dietary exposure to bifenthrin in drinking water. After calculating the DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.015	3.0	0.032	0.032	530

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENTHRIN—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Females (13 yrs. and above)	0.015	3.0	0.032	0.032	450
children (1 to 6 years old)	0.015	3.0	0.032	0.032	140

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Bifenthrin is currently registered for use that could result in short- and intermediate-term residential exposure. Registered termiticide use of bifenthrin constitutes a chronic exposure scenario; however, the exposure is considered negligible. The Agency has determined that it is appropriate to aggregate chronic food and water and short- and intermediate-term non-dietary exposures for bifenthrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food (water not included) and residential exposures aggregated result in aggregate MOEs of 940 for adults, 350 for children ages 1 to 6 years old, and 470 for infants less than 1 year old based on chronic food and residential use, e.g., turf representing the worst case residential exposure scenario. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenthrin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BIFENTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	940	100	0.032	0.006	320
Children 1 to 6 yrs. old	350	100	0.032	0.006	71

Applying the same exposure assumptions as above for short-term exposure, and after calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern.

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO BIFENTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. Population	940	100	0.032	0.006	480
Children 1 to 6 yrs. old	350	100	0.032	0.006	107

4. *Aggregate cancer risk for U.S. population*. A quantitative (Q_1*) dietary cancer risk assessment was not performed. Dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the DEEM® chronic exposure analysis using the chronic RfD. For the U.S. population, only 3.0% of the cPAD (cRfD) is occupied by chronic food exposure. Based on a comparison of the calculated DWLOCs and the estimated exposure to bifenthrin in drinking water (0.032 µg/L), the Agency does not expect the chronic aggregate exposure to exceed 100% of the cPAD (cRfD) for adults. Thus, EPA concludes with reasonable certainty that the carcinogenic risk is within acceptable limits.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bifenthrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated bifenthrin residue in plants. The data gathering method for pepper, lettuce, grapes, and caneberry is FMC method P–2132M, with a limit of quantitation of 0.05 ppm (given as 0.055 in some cases). This method is a variation of two other methods which have been submitted for inclusion in PAM II (FMC's Methods P–1031 and RAN–0140. This method has been adequately validated and is adequate for data collection. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels (MRL) have been established for residues of bifenthrin in/on bell or non-bell peppers, head lettuce, grape, or caneberries. International harmonization is therefore not an issue for these tolerances.

V. Conclusion

Therefore, the tolerances are established for residues of bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on caneberry crop subgroup 13A at 1.0 ppm, grape at 0.2 ppm, head lettuce at 3.0 ppm and peppers at 0.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301018 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 11, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301018, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16,

1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.442 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Caneberry subgroup	1.0
* * * * *	
Grape	0.2
* * * * *	
Lettuce, head	3.0
* * * * *	
Pepper, bell	0.5
Peppers, non-bell	0.5
* * * * *	

* * * * *

[FR Doc. 00–17618 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6732–8]

Delaware: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Delaware has applied to EPA for Final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revisions cover regulatory changes adopted on August 23, 1999 to the State's authorized hazardous waste program, which include various amendments to Federal hazardous waste regulations through January 21, 1999. EPA has determined that Delaware's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization, and is authorizing the state program revisions through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revisions should the Agency receive adverse comment. If EPA receives comments that oppose this action or portion(s) thereof, we will publish a document in the **Federal Register** withdrawing this rule or portion(s) thereof before it takes effect, and the separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize Delaware's hazardous waste program revisions will take effect.

DATES: This Final authorization for Delaware will become effective without further notice on September 11, 2000, unless EPA receives adverse comments by August 11, 2000. Once again, if EPA should receive such comments on its decision, the Agency will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. Copies of the Delaware program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: Department of Natural Resources & Environmental Control, Division of Air & Waste Management, 89 Kings Highway, Dover, DE 19901, Phone number 302–739–3689 and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides for authorization of State hazardous waste programs under Subtitle C. Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See also 40 CFR part 271. In fact, Congress designed RCRA so that the entire Subtitle C program would eventually be administered by the States in lieu of the Federal program. This is because the States are closer to, and more familiar with, the regulated community and therefore are in a better position to administer the programs and respond to local needs effectively.

After receiving authorization, the State administers the program in lieu of the Federal program, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Authorized States must revise their programs when EPA promulgates ''new'' Federal Standards that are more stringent or broader in scope than existing Federal Standards. States are not required to modify their programs when ''new'' Federal changes are less stringent than the existing Federal program or when changes reduce the scope of the existing Federal program. These changes are optional and are noted as such in the **Federal Register** (FR) notices in which the new Federal Standards are promulgated.

States which have received Final authorization from EPA under section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA concludes that Delaware's application for authorization of its program revisions meets all applicable statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Delaware Final authorization to operate its hazardous waste program as revised. Delaware now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA. Delaware also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Delaware subject to RCRA will now have to comply with the authorized State requirements instead of the analogous federal requirements in order to comply with RCRA. Delaware has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, in part, authority to:

- Perform inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements and suspend or revoke permits;
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and expects no comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** EPA is publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization or portion(s) thereof, that document will serve as a proposal to authorize such changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization decision or portion(s) thereof, we will withdraw this authorization decision, or those portion(s) for which EPA received comments opposing its decision, by publishing a document in the **Federal Register**. We will address all public comments in a subsequent final action based on the proposed rule.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, we may withdraw only that part of today's authorization rule. The authorization of the program changes that are not opposed by any comments may become effective on September 11, 2000. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

You should send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. We must receive your comments by August 11, 2000. You may not have an opportunity to comment again. If you want to comment on this action you must do so at this time.

F. What Has Delaware Previously Been Authorized for?

Delaware received final authorization effective June 22, 1984 (53 FR 23837, June 8, 1984) to implement its hazardous waste management program in lieu of the Federal program. On January 31, 1986 (51 FR 3954), the authorized Delaware program was incorporated by reference into the Code of Federal Regulations (CFR). On April 9, 1996, Delaware submitted a program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs). Delaware received final authorization for this program revision application effective October 7, 1996 (as published in 61 FR 41345, August 8, 1996). On June 15, 1998, Delaware submitted a second program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs). Delaware received final authorization for this program revision application effective October 19, 1998 (as published in 61 FR 44152, August 18, 1998). On February 7, 2000, Delaware submitted a third

program revision application for additional approval in accordance with the requirements of 40 CFR 271.21(b)(3) (Procedures for Revisions of State Programs).

EPA reviewed Delaware's application, and now makes an immediate final decision, subject to receipt of adverse written comments, that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Consequently, EPA intends to grant Delaware Final authorization for the program modifications contained in the program revision application.

G. What Revisions Are We Authorizing With Today's Action?

Delaware's program revision application includes State regulatory changes that are analogous to various amendments to 40 CFR parts 124, 260 through 266, and 270, that were published in the **Federal Register** through January 21, 1999.

Delaware is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements. Unless otherwise indicated, the listed Delaware regulatory references are to the Delaware Regulations Governing Hazardous Waste (DRGHW), as amended and effective January 1, 1999. The statutory references are to 7 Delaware Code Annotated (1991). In DRGHW 262, Delaware has adopted analogues to amendments to 40 CFR part 262, subparts E and H, but is not being authorized for these provisions in today's action because they are not subject to authorization. Delaware has adopted revisions analogous to Federal revisions to 40 CFR 268.44(a), but is not being authorized for these provisions in today's action because they are not subject to authorization. In addition, Delaware adopted revisions analogous to Federal revisions to 40 CFR 268.44(h)–(m), but is not seeking authorization for these provisions and continues to leave this authority with EPA for granting variances from a treatment standard.

Delaware is seeking authority for the Federal Corrective Action Program under HSWA as addressed in Revision Checklists 17L, 44A, B, and C and 121; additional Land Disposal Restrictions (LDR) revisions through September 1998 and the post closure permit requirement and closure process regulations (alternative to post-closure rule).

Federal requirement	Analogous Delaware authority
HSWA Cluster I	
Surface Impoundments; Non-Checklist SR1	7 Delaware Code (7 Del. Code) Chapter 63, §§ 6304, 6305 and 6307; Delaware Regulations Governing Hazardous Waste (DRGHW) 264.221(j) and 265.221(i).
Double Liners, 50 *FR* 28702, 07/15/85; Revision Checklist 17H	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 264.221(a), 264.221(c)–(e), 264.301(a), 264.301(c)–(e), 265.221(a)–(e), 265.254, 265.301(a)–(e).
Corrective Action, 50 *FR* 28702, 07/15/85; Revision Checklist 17L	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 264.90(a), 264.101(a)–(b), 122.60(c)(3)(vii).
HSWA Cluster II	
Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 *FR* 35894–35899, 09/23/87; Revision Checklist 42.	7 Del. Code, §§ 6305(a) and 6306(c); DRGHW 262.42(a)(2), 262.42(b) more stringent, 262.44.
Permit Application Requirements Regarding Corrective Action, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44A.	7 Del. Code, § 6305(a); DRGHW 122.14(c)–122.14(d)(3).
Corrective Action Beyond the Facility Boundary, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44B.	7 Del. Code, § 6305(a); DRGHW 264.100(e)–(e)(2), 264.101(c).
Corrective Action For Injection Wells, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44C.	[No regulatory analogue because Delaware Regulations Governing Underground Injection Control (DRGUIC) 122.23(b)–(c) prohibit the underground injection of hazardous waste.]
Permit Modification, 52 FR 45788–45799, 12/01/87; Revision Checklist 44D—with revisions as noted in Checklist 54.	7 Del. Code, § 6304 and 6305; DRGHW 122.41(a)(3) [Revised as noted in Checklist 54].
Permit as a Shield Provision, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44E—with revisions as noted in Checklist 100.	7 Del. Code, § 6304; DRGHW 122.4(a) [Revised as noted in Checklist 100].
Permit Conditions to Protect Human Health and the Environment, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44F.	7 Del. Code, § 6304; DRGHW 122.10(k).
Post-Closure Permits, 52 *FR* 45788–45799, 12/01/87; Revision Checklist 44G—with revisions as noted in Checklist 174.	7 Del. Code, § 6304; DRGHW 122.1(c) [Revised as noted in Checklist 174], 122.1(c)(5)–122.1(c)(6)(iii).
HSWA Codification Rule, Double Liners; Correction, 55 *FR* 19262–19264, 05/09/90; Revision Checklist 77—with revisions as noted in Checklist 100.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 264.221(c) and 264.301(c) [Revised as noted in Checklist 100].
RCRA Cluster II	
Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, 57 *FR* 3462–3497, 09/29/92; Revision Checklist 100.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 260.10, 264.15(b)(4), 264.19, 264.73(b)(6), 264.221(c)–264.221(d)(2), 264.221(f)–(i), 264.222, 264.223, 264.226(d)(1)–(3), 264.228(b)(2)–(4), 264.251(c)–(k), 264.252, 264.253, 264.254(c), 264.301(c)–264.301(d)(2), 264.301(f)–(l), 264.302, 264.303(c)(1)–(c)(3), 264.304, 264.304(d) 264.310(b)(3)–(6), 265.15(b)(4), 265.19, 265.73(b)(6), 265.221(a), 265.221(c), 265.221(f)–(g), 265.222, 265.223, 265.226(b), 265.228(b)(2)–(4), 265.254, 265.255, 265.259, 265.260, 265.301(a), 265.301(c), 265.301(f)–(i), 265.302, 265.303, 265.304c, 265.310(b)(2)–(5), 122.4(a), 122.17(b), 122.17(b)(2)–(7), 122.18(c)–(d), 122.21(b), 122.21(d), 122.42/Appendix 1.

Federal requirement	Analogous Delaware authority
RCRA Cluster III	
Corrective Action Management Units and Temporary Units, 58 *FR* 8658–8685, 02/16/93, Revision Checklist 121.	7 Del. Code, §§ 6305(a), 6307 and 6310; DRGHW 260.10, 264.3, 264.101(b), 264.552, 264.553, 265.1(b), 268.2(c), 122.2, 122.42 Appendix I.
RCRA Cluster IV	
Testing and Monitoring Activities, 58 *FR* 46040–46051, 08/31/93; Revision Checklist 126—with revisions as noted in Checklists 137 and 141.	7 Del. Code, §§ 6304, 6305, 6305 and 6307; DRGHW 260.11(a) [Revised as noted in Checklist 141], 260.22(d)(1)(i), 261.22(a)(1)–(2), 261.24(a), Part 261, Appendices II, III and X, 264.190(a), 264.314(c), 265.190(a), 265.314(d), 268.7(a) [Revised as noted in Checklist 137], 268.40(a) [Revised as noted in Checklist 137], 268.41(a) [Revised as noted in Checklist 137], Part 268, Appendices I and IX, 122.6(a), 122.19(c)(1)(iii)–(iv), 122.62(b)(2)(i)(C)–(D), 122.66(c)(2)(i)–(ii).
Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues, 58 *FR* 59598–59603, 11/09/93, Revision Checklist 127.	7 Del. Code, §§ 6304, 6305, 6306 and 6307; DRGHW 266.112(b)(2)(i), Part 266, Appendix VII, notes.
Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection, 59 *FR* 458–469, 01/04/94; Revision Checklist 128—with revisions as noted in Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a) [Revised as noted in Checklist 141], Part 261, Appendix VIII.
Recordkeeping Instructions; Technical Amendment, 59 *FR* 13891–13893, 03/24/94; Revision Checklist 131.	7 Del. Code, §§ 6305 and 6307; DRGHW, Part 264, Appendix I/Tables 1 and 2, Part 265, Appendix I/Tables 1 and 2.
Wood Surface Protection; Correction, 59 *FR* 28484, 06/02/94; Revision Checklist 132—with revisions as noted in Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a) [Revised as noted in Checklist 141].
Letter of Credit Revision, 59 *FR* 29958–29960, 06/10/94; Revision Checklist 133.	7 Del. Code, §§ 6305, 6306 and 6307; DRGHW 264.151(d), 264.151(k).
Correction of Beryllium Powder (P015) Listing, 59 *FR* 31551–31552, 06/20/94; Revision Checklist 134—with revisions as noted in Checklist 137.	7 Del. Code, § 6305(a)(1); DRGHW 261.33(e), Part 261, Appendix VIII, 268.42(a)/ Table 2 [Revised as noted in Checklist 137].
RCRA Cluster V	
Recovered Oil Exclusion, 59 *FR* 38536–38545, 07/28/94; Revision Checklist 135.	7 Del. Code, § 6305(a)(1); DRGHW 261.3(c)(2)(ii)(B), 261.4(a)(12), 261.6(a)(3)(iv)–(vi), 266.100(b)(3).
Removal of the Conditional Exemption for Certain Slag Residues, 59 *FR* 43496–43500 as Amended 08/24/948; Revision Checklist 136—with revisions as noted in Checklist 137.	7 Del. Code, § 6307; DRGHW 266.20(c), 268.41(a)/ Table CCWE [Revised as noted in Checklist 137].
Testing and Monitoring Activities Amendment 1, 60 *FR* 3089–3095, 01/13/95; Revision Checklist 139—with revisions as noted in Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a) [Revised as noted in Checklist 141].
Carbamate Production Identification and Listing of Hazardous Waste, 60 *FR* 7824–7859, 02/09/95 as Amended at 60 *FR* 19165, 04/17/95 and at 60 *FR* 25619, 05/12/95; Revision Checklist 140.	7 Del. Code, § 6305&(a)(1); DRGHW 261.3(a)(2)(iv)(E)–(G), 261.3(c)(2)(ii)(D), 261.32, 261.33(e)–(f), Part 261, Appendices VII–VIII.
Testing and Monitoring Activities Amendment II, 60 *FR* 17001–17004, 04/04/95; Revision Checklist 141.	7 Del. Code, § 6305(a); DRGHW 260.11(a).
Universal Waste: General Provisions, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142A.	7 Del. Code, §§ 6304, 6305, 6306, 6307, and 6312; DRGHW 260.10 intro, 260.10, 261.5(c), 261.5(f)(3)–261.5(g)(3), 261.9 intro, 262.10(b)–(g), 262.11(d), 264.1(g)(11)intro, 265.1(c)(14) intro, 268.1(f) intro, 122.1(c)(2)(viii) intro, 273.1, 273.5, 273.6, 273.10, 273.11, 273.12, 273.14 intro, 273.15, 273.16, 273.17, 273.18, 273.19, 273.20, 273.30, 273.31, 273.32(a)(1)–(2), 272.32(b), 273.34 intro, 273.35, 273.36, 273.37, 273.38, 273.39, 273.40, 273.50, 273.51, 273.52, 273.53, 273.54, 273.55, 273.56, 273.60, 273.61, 273.62, 273.70 intro–273.70(c).
Universal Waste Rule: Specific Provisions for Batteries, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 B.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 260.10, 261.6(a)(3)(ii)–(vi), 261.9(a), 264.1(g)(11)(I), 265.1(c)(14)(I), 266.80(a)–(b) intro, 268.1(f)(1), 122.1(a)(2)(viii)(A), 273.1(a)(1), 273.2, 273.6, 273.13, 273.14(a), 273.33(a), 273.34(a).
Universal Waste Rule: Specific Provisions for Pesticides, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 C.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 260.10, 261.9(b), 264.1(g)(11)(ii), 265.1(c)(14)(ii), 268.1(f)(2), 122.1(c)(2)(viii)(B), 273.1(a)(2), 273.3, 273.6, 273.13(b), 273.14(b)–(c)(2), 273.32(a)(1), 273.32(a)(3), 273.33(b), 273.34(b)–(c)(2).
Universal Waste Rule: Specific Provisions for Thermostats, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 D.	7 Del. Code, §§ 6304, 6305, 6306 and 6307; DRGHW 260.10, 261.9(c), 264.1(g)(11)(iii), 265.1(c)(14)(iii), 268.l(f)(3), 122.1(c)(2)(viii)(C), 273.1(a)(3), 273.4, 273.6, 273.13(c), 273.14(d), 273.33(c), 273.34(d).
Universal Waste Rule: Petition Provisions to Add A new Universal Waste, 60 *FR* 25492–25551, 05/11/95; Revision Checklist 142 E.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 260.20(a), 260.23, 273.80, 273.81.
Removal of Legally Obsolete Rules, 60 *FR* 33912–33915, 06/29/95; Revision Checklist 144.	7 Del. Code, §§ 6304, 6305, 6306, and 6307; DRGHW 261.31(a), 266.103(c)(5), 266.104(f)–(h), 122.2, 122.10(e)(4), 122.10(f)(2), 122.10(g)(1), 122.10(g)(1)(i) more stringent, 122.10(g)(1)(ii)–(iii).

Federal requirement	Analogous Delaware authority
RCRA Cluster VI	
Liquids in Landfills III, 60 *FR* 35703–35706, 07/11/95; Revision Checklist 145.	7 Del Code, 6305, DRGHW 264.314(e)(2)(ii)–(iii), 265.314(f)(2)(ii)–(iii).
RCRA Expanded Public Participation, 60 *FR* 63417–63434, 12/11/95; Revision Checklist 148.	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 124.31, 124.32, 124.33, 122.2, ''Facility mailing list, 122.14(b)(22), 122.30(m), 122.61(b)(5), 122.62(b)(6)–(7), 122.62(b)(8)–(11), 122.62(d), 122.66(d)(3)–(6), 122.66(g).
Amendments to the Definition of Solid Waste; Amendment II, 61 *FR* 13103–13106, 03/26/96; Revision Checklist 150.	7 Del. Code, § 6305; DRGHW 261.4(a)(12).
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners, 61 *FR* 15566–15660, 04/08/96, Revision Checklist 151 as amended 04/08/96 at 61 *FR* 15660–15668, 04/30/96, 61 *FR* 19117, 06/28/96, 61 *FR* 33680–33690, 07/10/96, 61 *FR* 36419–36421, 08/26/96, 61 *FR* 43924–43931, 02/19/97, 62 *FR* 7502–7600—with revisions as noted in Checklists 157, 159, 162, 167A, 167B, 171, and 173.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.1(c)(3)–(4), 268.1(e)(3)–(4) [Revised as noted in Checklist 157], 268.1(e)(5), 268.2(f); 268.2(i) [Revised as noted in Checklist 167A]; 268.2(j); 268.2(k) Revised as noted in Checklist 167B]; 268.3(a)–(c)(6), 268.7(a) [Revised as noted in Checklist 157]; 268.7(a)(1)(ii) [Removed as noted in Checklist 157], 268.7(a)(1)(iv)–(vi) [Removed as noted in Checklist 157], 268.7(a)(2)(i)(B) [Revised as noted in Checklist 157], 268.7(a)(3)(ii) [Revised as noted in Checklist 167B], 268.7(b)(4)(ii), 268.7(b)(5)(iv)–(v), 268.8 (Reserve), 268.9(a) [Revised as noted in Checklist 157], 268.9(d), 268.9(d)(1)(i)–(ii) [Revised as noted in Checklist 157], 268.39(a) [Revised as noted in Checklist 159], 268.39(b), 268.39(c) [Revised as noted in Checklist 173], 268.39(d) [Revised as noted in Checklist 159], 268.39(e)–(g), 268.40(e) [Revised as noted in Checklist 167], 268.40(g) [Revised as noted in Checklist 171], 268.40/Table [Revised as noted in Checklist 173], 268.42 Table 1, 268.44(a) [Revised as noted in Checklist 162], 268.48(a)/Table UTS [Revised as noted in Checklist 171], Part 268, Appendix XI.
Imports and Exports of Hazardous Waste: Implementation of OECD Council Division, 61 *FR* 16290–16316, 04/12/96; Revision Checklist 152.	7 Del. Code, §§ 6305 and 6306; DRGHW 261.6(a)(5), 262.10(d)–(h), 262.53(b), 262.56(b), 262.58, 262.80, 262.81, 262.82, 262.83, 262.84, 262.85, 262.86, 262.87, 262.88 (Reserved), 262.89, 263.10(d), 263.20(a), 264.12(a)(1)–(2), 264.71(d), 265.12(a)(1)–(2), 265.71(d), 266.70(b)(2)–(3), 273.20, 273.40, 273.56, 273.70 intro, 273.70(d).
RCRA Cluster VII	
Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, 59 *FR* 62896–62953, 12/06/94 as amended by 60 *FR* 26828–26829, 05/19/95, 60 *FR* 50426–50430, 09/29/95, 60 *FR* 56952–56954, 11/13/95, 61 *FR* 4903–4916, 02/09/96, 61 *FR* 28508–28510, 06/05/96, 61 *FR* 59932–59997, 11/25/96; Revision Checklist 154—with revisions as noted in Checklists 163 and 177.	7 Del. Code, § 6305; DRGHW 260, 261, 262, 264, 265, 122 revisions were adopted to substantively and numerically coincide identically with the Federal revisions described in Revision Checklist 154 [Revised as noted in Checklists 163 and 177].
Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, 62 *FR* 1992–1997, 01/14/97; Revision Checklist 155—with revisions as noted in Checklist 160.	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 268.39(c) [Revised as noted in Checklist 160].
Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, 62 *FR* 6622–6657, 02/12/97; Revision Checklist 156.	7 Del. Code, §§ 6304, 6305, 6305(a), 6306, 6306(c) 6307, and 6310; DRGHW 260.10, 261.2(a)(2)(iii)–(iv), 262.10(i), 262.20(f) more stringent, 263.10(e)–(f), 264.1(g)(8)(i)(D), 264.1(g)(8)(iv), 264.1(i), 264.70, 264.1200, 264.1201, 264.1202, 265.1(c)(11)(i)(D), 265.1(c)(11)(iv), 265.1(f), 265.70, 265.1200, 265.1201, 265.1202, 266.200, 266.201, 266.202, 266.203(a)–(a)1)(iii), 266.203(a)(2)–(c), 266.204, 266.205, 266.206, 122.1(c)(3)(i)(D), 122.1(c)(3) (iii), 122.42(h)–(i).
Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, 62 *FR* 25998–26040, 05/12/97; Revision Checklist 157—with revisions as noted in Checklists 167B and 167C.	7 Del. Code, § 6304, 6305, and 6307; DRGHW 261.1(c)(9)–(12), 261.2(c) table 1, 261.4(a)(13)–(14), 261.6(a)(3)(ii), 268.1(e) intro–(e)(4), 268.4(a)(2)(iv), 268.4(a)(4), 268.7(a) intro; 268.7(a)(1) [Revised as noted in Checklist 167B], 268.7(a)(2) [Revised as noted in Checklist 167B], 268.7(a)(3) [Revised as noted in Checklist 167B], 268.7(a)(3)(i), 268.7(a)(3)(ii) [Revised as noted in Checklist 167B], 268.7(a)(4) [Revised as noted in Checklist 167B], 268.7(a)(4)/table [Revised as noted in Checklist 167B], 268.7(a)(5) [Revised as noted in Checklist 167B], 268.7(a)(5)(i)–(iii), 268.7(a)(6) [Revised as noted in Checklist 167B], 268.7(a)(7) [Revised as noted in Checklist 167C], 268.7(a)(8)–(b), 268.7(b)(1)–(2) [Revised as noted in Checklist 167B], 268.7(b)(3) intro, 268.7(b)(3)(i)–(ii), 268.7(b)(3)(ii)/table [Revised as noted in Checklist 167C], 268.7(b)(4)–(b)(4)(iii), 268.7(c)(1)–(2), 268.9(a), 268.9(d)(1)(ii), 268.30; 268.32–268.36 (Reserved), 268.40/Table of Treatment Standards [Revised as noted in Checklist 167C], 268.42/Table 1, 268.44(o), 268.44(o)/Table 1, 268 Appendices I, II, III, and X (Reserved), 268 Appendix VI, 268 Appendices VII and VIII [Revised as noted in Checklist 167C].

Federal requirement	Analogous Delaware authority
Testing and Monitoring Activities Amendment III, 62 *FR* 32452—32463, 06/13/97, Revision Checklist 158.	7 Del. Code, §§ 6304, 6305, 6306, 6307, and 6310; DRGHW 260.11(a) intro–(a)(15), 264.1034(d)(1)(iii), 264.1034(f), 264.1063(d)(2), 264 Appendix IX, footnote 5, 265.1034(d)(1)(iii), 265.1034(f), 265.1063(d)(2), 266.104(e)(1), 266.106(g)(1)–(2), 266.107(f), Part 266 Appendix IX, Section 3.0, Note.
Conformance With the Carbamate Vacatur, 62 *FR* 1992–1997, 05/29/97; Revision Checklist 159—with revisions as noted in Checklist 167C.	7 Del. Code, §§ 6302, 6304, 6305 and 6307; DRGHW 261.32/table, 261.33, 261 Appendix VII, 261 Appendix VIII, 268.39(a), 268.39(d), 268.40 table, [Revised as noted in Checklist 167C].
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment, 62 *FR* 37694—37699, 07/14/97; Revision Checklist 160—with revisions as noted in Checklist 173.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 268.39(c) [Revised as noted in Checklist 173].
Emergency Revision of the Carbamate Land Disposal Restrictions, 62 *FR* 45568, 08/28/97; Revision Checklist 161—with revisions as noted in Checklist 171.	7 Del. Code, §§ 6304, 6305 and 6307; DRGHW 268.40(g) [Revised as noted in Checklist 171], 268.48(a)/Table [Revised as noted in Checklist 171].
Clarification of Standards for Hazardous Waste LDR Treatment Variances, 62 *FR* 64504—64509, 12/05/97; Revision Checklist 162—with revisions as noted in Checklist 167B.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.44(a), 268.44(h)–(h)(2)(i), 268.44(h)(3) [Revised as noted in Checklist 167B], 268.44(m).
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment, 62 *FR* 64636–64671, 12/8/97; Revision Checklist 163—with revisions as noted in Checklist 177.	7 Del. Code, § 6305; DRGHW 264 and 265 revisions were adopted to substantively and numerically coincide identically with the Federal revisions described in Revision Checklist 163 [revised as noted in Checklist 177].
Recycled Used Oil Management Standards; Technical Correction and Clarification, 63 *FR* 24963–24969, 5/6/98, as amended 7/14/98, at 63 *FR* 37780–37782; Revision Checklist 166.	7 Del. Code, §§ 6304–6307, and 6310; DRGHW 261.5(j), 261.6(a)(3)(iv)(A)–(C), 279.10(I), 279.22(d), 279.45(h), 279.54(g), 279.64(g), 279.74(b).
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167A—with revisions as noted in Checklist 172.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.2(i), 268.3(d), 268.34(a), 268.34(b)–(e) [Revised as noted in Checklist 172], 268.40(e), 268.40(h), 268.40/Table, 268.48(a)/Table UTS.
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167B.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.2(k), 268.7(a)(1)–(a)(3) intro, 268.7(a)(3)(ii), 268.7(a)(4)–(6), 268.7(b)(1)–(4) intro, 268.7(e), 268.44(h)(3) intro–(5), 268.49.
Land Disposal Restrictions Phase IV—Corrections 63 *FR* 28556–28753, 5/26/98, as amended at 63 *FR* 31266, 6/8/98; Revision Checklist 167C.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.4(a)(2)(ii)–(iii), 268.7(a)(7), 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv)–(b)(6), 268.40(e), 268.40/Table, 268.42(a), 268.45(a) intro, 268.45(d)(3)–(4), 268.48/Table, Appendix VII, Tables 1 and 2, Appendix VIII, Part 268.
Mineral Processing Secondary Materials Exclusion, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167D.	7 Del. Code, § 6305; DRGHW 261.2(c)(3), 261.2(c)(4)/Table, 261.2(e)(1)(iii), 261.4(a)(16) intro–(vi).
Bevill Exclusion Revisions and Clarifications, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167E.	7 Del. Code, § 6305; DRGHW 261.3(a)(2)(i), 261.3(a)(2)(iii), 261.4(b)(7).
Exclusion of Recycled Wood Preserving Wastewaters, 63 *FR* 28556–28753, 5/26/98; Revision Checklist 167F.	7 Del. Code, § 6305; DRGHW 261.4(a)(9)(iii).
Hazardous Waste Combustors; Revised Standards, 63 *FR* 33782–33829, 06/19/98; Revision..	
Checklist 168	7 Del. Code, § 6305; DRGHW 261.4(a)(17), 261.38, 122.42(j) intro, 122.42(j), 122.42 Appendix I, 122.72(b)(8).
RCRA Cluster IX	
Petroleum Refining Process Wastes, 63 *FR* 42110–42189, 08/06/98; Revision Checklist 169.	7 Del. Code, §§ 6304, 6305(a), and 6305(a)(1); DRGHW 261.3(a)(2)(iv)(C), 261.3(c)(2)(ii)(B), 261.3(c)(2)(ii)(E), 261.4(a)(12)(i)–(ii), 261.4(a)(18)–(19), 261.6(a)(3)(iv)(C), 261.31(a), 261.32, 261 Appendix VII, 266.100(b)(3), 268.35, 268.40/Table.
Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production, 63 *FR* 47410–47418, 09/04/98; Revision Checklist 171.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.40(g), 268.40(i), 268.40/Table, 268.48(a)/Table.
Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, 63 *FR* 48124–48127, 09/09/98; Revision Checklist 172.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.34(b)–(f).
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule, 63 *FR* 51254–51267, 09/24/98; Revision Checklist 173.	7 Del. Code, §§ 6304 and 6305; DRGHW 268.39(c), 268.40/Table.
Post-Closure Permit Requirement and Closure Process, 63 *FR* 56710–56735, 10/22/98; Revision Checklist 174.	7 Del. Code, §§ 6304, 6305, and 6307; DRGHW 264.90(e)–(f), 264.110(c), 264.110(c)(1)–(2), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(c)–(d), 265.112(b)(8), 265.112(c)(1)(iv), 265.118(c)(4)–(5), 265.118(d)(1)(iii), 265.121, 265.140(d), 122.1(c) intro, 122.1(c)(7), 122.14(a), 122.28.

Federal requirement	Analogous Delaware authority
Organic Air Emission Standards: Clarification and Technical Amendments, 64 *FR* 3382, 01/21/99; Revision Checklist 177.	7 Del. Code, § 6305; DRGHW 262.34(a)(1)(i)–(ii), 264.1031, 264.1080(b)(5), 264.1083(a)(1)(i)–(ii), 264.1083(b)(1)(i)–(ii), 264.1084(h)(3), 264.1086(e)(6), 265.1080(b)(5), 265.1084(a)(1)(i)–(ii), 265.1084(a)(3)(ii)(B), 265.1084(a)(3)(ii)(D), 265.1084(a)(3)(iii), 265.1084(b)(1)(i)–(ii), 265.1084(b)(3)(ii)(B), 265.1084(b)(3)(ii)(D), 265.1084(b)(3)(iii), 265.1085(h)(3), 265.1085(h)(3)(i)–(ii), 265.1087(e)(6).

H. Where Are the Revised State Rules Different From the Federal Rules?

The Delaware hazardous waste program contains several provisions which are more stringent than is required by the RCRA program. The more stringent provisions are being recognized as a part of the Federally-authorized program and include the following:

1. At DRGHW 262.42(b), Delaware is more stringent because the State requires a small quantity generator to file an exception report when confirmation of the hazardous waste delivery to the designated facility is not made within 45 days instead of 60 days of the date the waste was accepted by the initial transporter. The generator must also notify the State of the designated facility and the State to which the waste may have been delivered. (Checklist 42)

2. At Delaware Regulations Governing Underground Injection Control (DRGUIC) 122.23(b)–(c), Delaware is more stringent in that the State prohibits the underground injection of hazardous waste. Therefore, there are no hazardous waste corrective action requirements for injection wells. (Checklist 44C)

3. At DRGHW 262.20(f), Delaware is more stringent because the State restricts the exemption to manifest requirements only when the military munitions are being transported during an emergency response. (Checklist 156)

Furthermore, the State requires transporters of used oil to obtain transporter permits. See DRGHW part 263, subpart E and Checklist 166. Since this requirement goes beyond the scope of the Federal program, it does not constitute part of the authorized program.

In addition, Delaware will be authorized to carry out, in lieu of the Federal program, State-initiated changes to provisions of the State's Program. The following State-initiated changes are equivalent and analogous to the numerically identical RCRA provisions found at Title 40 of the Code of Federal Regulations: DRGHW 260.1(a)(4) through (a)(6), and (c); 261.6(a)(3)(v); 262.23(d); 264.18(b)(1) introductory paragraph; 264.91(c) introductory paragraph; 264.145(c)(7); 264.221(e)(2)(I)(B); 265.145(e)(1)(I)(B) and (D), (ii)(B) and (D), and paragraph (e)(2); 268.7(a)(8); and 268.44 Table. One other state-initiated change being approved by this notice is DRGHW 122.1 which is analogous to 40 CFR Section 270.1.

Unless EPA receives comments opposing this action by August 11, 2000 and publishes a **Federal Register** document withdrawing the immediate final rule or portions thereof, this Final authorization approval will become effective without further notice on September 11, 2000.

I. Who Handles Permits After This Authorization Takes Effect?

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based on the Federal provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA will also transfer any pending permit applications and pertinent file information to the State within thirty (30) days of the effective date of this authorization.

Upon authorization of the State program for any additional portions of HSWA, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities mandated by HSWA in the State, in those areas for which the State is receiving authorization. If EPA promulgates standards for additional processes or regulations mandated by HSWA not covered by the State's authorized program, EPA will process and enforce RCRA permits in the State in those new areas until the State receives final authorization of equivalent State standards.

EPA will be responsible for enforcing the terms and conditions of the Federal portion of the permits until they expire or are terminated in accordance with 40 CFR 124.5 and 271.8.

The State and EPA will coordinate implementation of those HSWA provisions for which the State has not received authorization until such time as it receives authorization from EPA to implement the remaining HSWA provisions in lieu of EPA.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authorization to operate the program on Indian lands since there are no Federally-recognized Indian Lands in the State.

K. What Is Codification and Is EPA Codifying Delaware's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA uses 40 CFR part 272 for codification of the decision to authorize Delaware's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA is not codifying Delaware's hazardous waste program at this time, but reserves amendment of 40 CFR part 272, subpart I, for such future use.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Delaware program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not apply to duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit 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 United States 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).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on 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, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Delaware's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in Delaware in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any

rule that: (1) The Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not concern an environmental health or safety risk that may have a disproportionate effect on children.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with the consulting option, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect communities of Indian tribal governments. Delaware is not authorized to implement the RCRA hazardous waste program in Indian country, since there are no Federally-recognized Indian lands in the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve such technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 19, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00–17345 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 94–102, CS Docket No. 98–120; FCC 00–224]

Service Rules for the 746 Through 764 and 776 Through 794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration seeking changes in service rules adopted previously in this proceeding regarding commercial use of the 747–762 MHz and 777–792 MHz bands. The Commission generally affirms these service rules and provides additional guidance on the factors it will consider when reviewing applications that would accelerate the departure of incumbent analog television licensees. A separate document seeks comment on additional measures to facilitate the use of these bands for new commercial services.

DATES: Effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT:

Legal Information: Stanley Wiggins or Jane Phillips, 202–418–1310.

Technical Information: Marty Liebman, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order (MO&O) portion of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99–168 and CS Docket No. 98–120, FCC 00–00–224, adopted June 22,2000, and released June 30, 2000. The Notice of Proposed Rulemaking portion of this decision is summarized elsewhere in this **Federal Register**. The complete text of this MO&O is available for inspection and copying during normal business hours at the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. In this Memorandum Opinion and Order (MO&O), the Commission responds to petitions for reconsideration of the First Report and Order (First R&O), 65 FR 3139, January 20, 2000, in this proceeding. The First R&O adopted service rules for the commercial use of the 747 through 762 MHz and 777 through 792 MHz bands that enable the broadest possible use of this spectrum, consistent with sound spectrum management. The MO&O generally affirms the service rules adopted in the First R&O, and provides additional guidance on the factors the Commission will consider when reviewing regulatory requests necessary to implement voluntary agreements that would accelerate the departure of incumbent analog television licensees and open these bands for new 700 MHz licensee use.

2. Specifically, the Commission removes the restrictions on the

operation of base stations in the lower band, and on mobile, portable and control stations in the upper band, and revises its power limits for fixed and base stations to better enable Time Division Duplex (TDD) technologies to operate on these bands. In light of these changes, the Commission sees no need to revise the original, mandatory pairing of lower-band and upper-band spectrum blocks. Additionally, the Commission affirms its decision in the First R&O that this band's service rules should be oriented to intensive and efficient commercial wireless use, and also enable broadcast-type services that can satisfy the technical rules necessary for efficient overall use of spectrum.

3. First, as discussed in paragraphs 6 through 10 of the full text of the MO&O, the Commission allows base, fixed, portable, mobile, and control stations on both the upper and lower bands, subject to the consistent application of the power limits already adopted for the various types of stations. Specifically, the Commission revises Section 27.50 of its Rules to allow 1000 watt Effective Radiated Power (ERP) base and fixed stations in both the lower and upper bands, and to allow 30 watt ERP mobile and control stations, as well as 3 watt ERP portables, in both the upper and lower 700 MHz bands. The Commission indicates that these revisions will enable TDD-based technologies to use either the upper or lower bands, or both, as circumstances warrant. The Commission also decides not to alter its determination to establish spectrum blocks and assign licenses consisting of paired bands, in part, because the Commission finds that modifying the power limits is a better means for enabling TDD operations than eliminating frequency pairing. The Commission notes that the pairing of these bands has been favored by the majority of commenters in this proceeding.

4. The Commission further affirms the internal out-of-band emission (OOBE) limits established in the First R&O, finding that a modification of the internal, 43+10 log P out-of-band emission limit adopted in the First R&O to protect commercial service operators from one another is not demonstrated to be necessary to protect TDD-based technologies. However, the Commission believes that users of TDD technology are entitled to protection from interference from adjoining bands, and thus indicates that, in the event that sufficient, valid evidence is presented supporting instances of interference, it would take action to minimize such interference. This discussion may be found at paragraphs 14 through 17 of the full text of MO&O.

5. As discussed in paragraphs 21 through 27 in the full text of the MO&O, the Commission also declines to alter the OOBE standards adopted to protect public safety operations. Instead, the Commission finds that the existing OOBE standards reflect a carefully considered effort to protect public safety, while enabling the viability of the commercial 700 MHz band, which Congress also directed the Commission to establish. The Commission, as discussed in paragraphs 21 through 29 in the full text of the MO&O, reiterates its concern that operations in the 700 MHz bands not adversely affect Global Positioning System (GPS) operations, but finds that the OOBE limits adopted in the First R&O to protect such operations are sufficient. Further, at paragraph 31 of the full text of the MO&O, the Commission affirms the technical criteria adopted in the First R&O for the protection of digital television (DTV) stations from commercial stations that will operate in the 700 MHz band. However, the MO&O, at paragraph 32, clarifies a statement made in the First R&O to the effect that licenses issued for the 700 MHz bands within 120 km of the borders of Canada and Mexico would be subject to whatever future agreements the United States develops with those countries. The MO&O clarifies that *all* 700 MHz licensees will be subject to any future agreements the United States develops with Canada and Mexico.

6. Finally, as discussed in paragraph 34 of the full text of the MO&O, the Commission declines to adopt various proposals for technical modifications of the Commission's Rules that deal with emission limits (*i.e.*, Section 27.53 of the Commission's Rules).

7. The MO&O next considers conventional television broadcast issues. First, regarding inter-service flexibility, the Commission affirms its decision in the First R&O to preclude conventional broadcast service in the 700 MHz band. As discussed in more detail in paragraph 38 in the full text of the MO&O, the Commission decided to adopt technical and service rules that effectively preclude conventional television broadcast service on the 700 MHz band, based on Congressional intent that this spectrum be recovered from conventional broadcast use for the provision of commercial wireless services; the high potential for interference to lower-power services caused by the disparity in the two services' characteristic power levels and transmitter tower heights and the characteristic limits of receivers' ability to distinguish between desired and extraneous signals; and the predominant interest in the record in developing this spectrum for fixed and mobile wireless use. No material has been presented to change this finding.

8. The MO&O, at starting at paragraph 44, addresses issues relating to the transition to digital television (DTV) and the voluntary relocation of incumbent broadcast licensees currently operating in the 700 MHz band. In that regard, the Commission considers challenges to two aspects of the rules for the 700 MHz band, both keyed to the Commission's treatment of the transition to DTV. In response to these challenges, at paragraphs 44 and 45 of the full text of the MO&O, the Commission dismisses objections to its use of the statutory target date for the completion of the DTV transition—December 31, 2006—as the basis for setting certain regulatory dates for the new commercial licenses, and denies the request that it revise the text of the First R&O and the accompanying rules to identify ''completion of DTV transition'' as the triggering event for commencement of the eight-year license term for broadcast service, and the substantial performance period.

9. The Commission also affirms the decision in the First R&O that this band's service rules should be oriented to intensive and efficient commercial wireless use, and also enable broadcast-type services that can satisfy the technical rules necessary for efficient overall use of spectrum. The Commission thus declines to reconsider its willingness to consider voluntarily negotiated agreements that would expedite the departure of incumbent analog television licensees from these frequencies. The Commission finds that voluntary clearing agreements between 700 MHz licensees and TV incumbents would generally advance the public interest and further the statutory scheme. The MO&O therefore provides additional guidance regarding the Commission's treatment of such voluntary arrangements, in an effort to provide greater certainty to potential bidders and incumbent broadcasters and facilitate the early clearance of incumbent broadcast stations on channels 59–69. These agreements should facilitate both the provision of next generation and Internet wireless services, and the transition to DTV by these incumbent broadcast stations. This additional guidance establishes certain presumptions regarding the Commission's treatment of these voluntary arrangements, and recognizes the must-carry obligation of cable systems with regard to broadcasts of

digital television programming. Paragraphs 46 through 50 in the full text of the MO&O provide more detailed discussion of these issues which are summarized in this **Federal Register** document.

10. Paragraphs 51 through 54 of the full text of the MO&O discuss and affirm the Commission's authority to review the voluntary agreements between incumbent broadcast licensees and new 700 MHz licensees. The Commission finds that such agreements, if properly structured, will further the broad public interest in intensive and new wireless services to all Americans, should help make available to the public safety community needed new spectrum that Congress has mandated be allocated for public safety use, and should help expedite a transition to DTV for broadcasters who might need assistance to implement such a transition.

11. The MO&O, at paragraphs 55 and 56, analyzes matters related to the possible loss of broadcast services resulting from voluntary agreements. The Commission affirms its finding in the First R&O that, in reviewing voluntary agreements, it must weigh the benefits associated with recovery of the spectrum for new wireless uses against any loss of service to the broadcast community of license. The fundamental importance of over-the-air broadcast service is recognized by legislative and judicial determinations, and the Commission's own practice in reviewing specific instances of loss of service. In the past, the Commission has required that stations withdrawing or downgrading existing service justify that action by establishing offsetting considerations that demonstrate the public generally will benefit.

12. The Commission carefully considers the weight to be accorded such losses, both from a broad policy view and in the review of specific regulatory requests. From the broader policy perspective, the Commission determines that several statutory purposes involved here are best served by enabling voluntary agreements that result in the expeditious and efficient recovery of these frequencies for the legislatively specified commercial and public safety purposes. The Commission also notes that the over-the-air service involved here is scheduled to terminate as part of the DTV transition, and that Congress has directed the Commission to auction and license these frequencies on an expedited schedule well in advance of December 31, 2006. Thus the Commission finds that temporary loss-of-service issues here do not raise concerns that generally prevent regulatory requests in connection with voluntary agreements.

13. The Commission implements these policy judgements by providing guidance on the review of regulatory requests arising from band clearance agreements between new licensees of this spectrum and incumbent broadcast licensees on channels 59–69, discussed in paragraphs 57 through 59 of the full text of the MO&O. First, the Commission believes that private parties generally are the best evaluators of their own economic circumstances and alternatives and the Commission will not look to second guess their business decisions. The Commission's underlying policy premise is that voluntary agreements can provide supplemental resources to broadcasters that will both expedite their transition to DTV and strengthen their economic viability, but the private parties should determine for themselves when the economic case is made. When the private parties are satisfied, therefore, the Commission will be inclined to grant regulatory requests arising from such commercial arrangements, provided the requests do not, on balance, have adverse public policy consequences. Second, the Commission notes that its role will be limited to weighing the effect on the public interest of regulatory requests in connection with such agreements. The Commission will not be reviewing the wisdom of the underlying private agreements, or the negotiation process leading to them, in the normal course.

14. The Commission also establishes a process and specific guidance for parties potentially interested in negotiating voluntary agreements. To ensure that all public interest issues are readily identified, the Commission will require broadcasters entering into voluntary agreements to provide the public in the principal area served by the licensee with the notice required by the Commission's Rules for filing of applications. (47 CFR 73.3580(d).) In addition, the Commission will issue public notice of the filing of all voluntary agreements requiring its approval. The Commission clarifies that its review of such requests generally will fall within Section 316 of the Act, and notes that it will consider showings of actual loss of service, rather than theoretical loss, resulting from a voluntary agreement.

15. The Commission, in paragraphs 60 through 62 of the MO&O, establishes a rebuttable presumption that, in certain circumstances, substantial overall public interest benefits will arise from a voluntary agreement between a 700 MHz licensee and an incumbent broadcast licensee that clears the 700 MHz band of incumbent television licensees. Specifically, the Commission will initially presume that the public interest is substantially furthered, so that routine approval is justified, when an applicant demonstrates that the request will both result in certain specific benefits and avoid specific detriments. The Commission will recognize such a presumption favoring the grant of any requests that: (1) Would result in new wireless services to consumers, in particular ''next generation'' or ''3G'' wireless services; (2) would clear commercial frequencies that enable provision of new public safety service; or (3) would result in the provision of new wireless service to rural or other underserved communities. The applicant would also need to show that a grant of the request would not: (1) Result in the loss of any of the four stations in the designated market area with the largest audience share; or (2) occasion the loss of the sole service licensed to the local community; or (3) result in the loss of a community's sole service on channels reserved for noncommercial educational broadcast stations.

16. This presumption is not conclusive or dispositive, however. In specific cases where the presumption applies, for instance, the Commission would consider whether special or unique factors raised by the resulting loss of broadcast service would be sufficient to rebut the presumption. The MO&O also finds, in paragraphs 63 through 66 that, where the presumption does not apply, the Commission will review regulatory requests by weighing the loss of broadcast service, acceleration of the DTV transition, and the advent of new wireless service on a case-by-case basis. In reviewing requests not subject to the presumption, the Commission also will consider as a relevant factor in its public interest determination the extent to which the station's programming will remain available, after implementation of the agreement, to a significant number of its viewers in the licensee's service area.

17. The MO&O points to the important role that cable carriage can play during the transition period by providing continued service to viewers that would otherwise be deprived of broadcast service, and addresses two cable issues in the context of voluntary relocation agreements. First, the MO&O clarifies that cable systems are ultimately subject to the must carry obligation with regard to broadcasters' digital signals. Second, to facilitate the continuing availability during the transition of the analog signal of a

broadcaster who is party to a voluntary relocation agreement with new 700 MHz licensees, the MO&O states that such a broadcaster could, in this context and at its own expense, provide its broadcast digital signal in an analog format for carriage on cable systems, but only for a limited period. Until the transition to digital television is completed in a given market, nothing prohibits the cable system from providing such signals in analog format to subscribers.

18. Another factor the Commission will consider, when the favorable presumption does not apply, is whether the station's signal will remain available, after implementation of the agreement, to a significant number of its viewers in the licensee's service area. If that signal is effectively available to a significant number of current viewers through various distribution channels, and implementation of the voluntary agreement would not create additional TV white or gray area, the Commission would generally be inclined to approve the voluntary agreement.

19. The MO&O next denies a proposal that the Commission adopt an ''equivalent regulatory regime'' for new services on these bands that is similar to that for broadcast television. The MO&O also denies the request that, to the extent the Commission applies a less regulated structure to new broadcast-type services on these channels, it should accord similarly relaxed treatment to stations operating on channels 2–59. The Commission recognizes that specific statutory provisions govern broadcast services, but it will not, at this juncture, attempt to anticipate the form or forms that the next generation of ''broadcast-type'' services on these bands may take, or to configure a regulatory structure on the basis of speculation, but will determine the applicable regulatory framework in the context of the offering of specific, actual services. This issue is discussed in paragraph 68 of the full text of the MO&O.

20. The MO&O, in paragraph 70 of the full text, denies a request that the Commission review its decision in the First R&O establishing Guard Bands to protect the immediately adjoining public safety licensees on channels 63, 64, 68, and 69 from harmful interference from operations on the 30 megahertz segment, and consider instead enforcing emission limits.

21. The MO&O, in paragraph 73 of the full text, considers issues pertaining to licensing rules. Regarding the Commission's decision in the First R&O that licenses in the 747 through 762 MHz and 777 through 792 MHz bands should not count against the 45/55 MHz spectrum cap if used to provide CMRS, the Commission dismisses a proposal to extend the CMRS spectrum cap to include 700 MHz spectrum.

22. Finally, the MO&O, in paragraphs 76 through 77 of the full text, considers competitive bidding issues. The Commission affirms its decision to limit its nationwide bid withdrawal procedure to those bidders seeking a 30 megahertz nationwide license. The MO&O also declines to modify the service rules adopted in the First R&O by redrawing the geographic territories, reducing the size of the spectrum blocks, and/or setting aside a portion of the 700 MHz spectrum for exclusive bidding by smaller business.

Administrative Matters

23. The actions contained in this MO&O are exempt from the provisions of the Paperwork Reduction Act of 1995, under the Consolidated Appropriations statute, *See* Consolidated Appropriations, Appendix E, Sec. 213. *See* also 145 *Cong. Rec.* at H12493–94 (November 1, 1999). Implementation of the revisions to part 27 required to assign licenses in these commercial spectrum bands, including revisions to information collections, are therefore not subject to approval by the Office of Management and Budget, and became effective upon adoption. Similarly, the Consolidated Appropriations statute exempts this decision from the Regulatory Flexibility Act provisions and from the Contract With America Advancement Act provisions.

24. **Authority.** This action is taken pursuant to Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 324, 331, 332, 336, 337, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 315, 316, 317, 324, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

Ordering Clauses

25. Part 27 of the Commission's Rules is revised on reconsideration to modify service rules for the 747 through 762 MHz and 777 through 792 MHz bands, as set forth in this synopsis, and, in accordance with Section 213 of the Consolidated Appropriations Act, 2000, Public Law 106 through 113, 113 Stat. 1501 (1999), these rules shall be effective July 12, 2000.

26. The Petitions for Reconsideration filed by ArrayComm, Inc., the Association of Local Television Stations, Inc., the Association for Maximum Service Television, Inc., the Association of Public-Safety Communications Officials-International, Inc., the Federal Law Enforcement Wireless Users Group, the National Association of Broadcasters, Nelson Repeater Services, Inc., Northcoast Communications, LLC, and the U.S. GPS Industry Council are denied; the Petitions for Reconsideration filed by Adaptive Broadband Corporation, TRW, Inc., and US WEST Wireless, LLC are granted, to the extent indicated in the MO&O, and are otherwise denied; the request by Rand McNally & Company to withdraw its Petition for Reconsideration is granted.

List of Subjects in 47 CFR Part 27

Telecommunications.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 to read as follows:

PART 27—WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 27 continues to read:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332.

2. Section 27.50(b) is revised, and in paragraph (c) the heading of Table 1 is revised to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting in the 746–764 MHz band and the 777–792 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Control stations and mobile stations transmitting in the 747–762 MHz band and the 776–794 MHz band are limited to 30 watts ERP;

(3) Portable stations (hand-held devices) transmitting in the 747–762 MHz band and the 776–794 MHz band are limited to 3 watts ERP;

(4) Maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The

measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(c) * * *

Table 1—Permissible Power and Antenna Heights for Base and Fixed Stations in the 746–764 MHz and 777–792 MHz Bands

* * * * *

3. Section 27.53 is amended by revising paragraph (c), by removing paragraph (d), and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), to read as follows:

§ 27.53 Emission limits.

* * * * *

(c) For operations in the 747 to 762 MHz band and the 777 to 792 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 747 to 762 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB;

(2) On any frequency outside the 777 to 792 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB;

(3) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than 76 + 10 log (P) dB in a 6.25 kHz band segment, for base and fixed stations;

(4) On all frequencies between 764 to 776 MHz and 794 to 806 MHz, by a factor not less than 65 + 10 log (P) dB in a 6.25 kHz band segment, for mobile and portable stations;

(5) Compliance with the provisions of paragraphs (c)(1) and (c)(2) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the frequency block, a resolution bandwidth of at least 30 kHz may be employed;

(6) Compliance with the provisions of paragraphs (c)(3) and (c)(4) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment.

* * * * *

4. Section 27.60(b)(2)(i) is amended by removing the word ''746–764 MHz band'' and adding, in their place, ''746–764 MHz and 777–792 MHz bands'' in its place, and paragraph (b)(2)(ii) is amended by removing the words ''776-794 MHz band'' and adding, in their place, ''776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 747–762 MHz and 777–792 MHz bands.''

[FR Doc. 00–17648 Filed 7–11–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000515139–0203–02; I.D. 041200D]

RIN 0648–AO03

Atlantic Highly Migratory Species (HMS); Atlantic Bluefin Tuna Specifications and HMS Regulatory Amendment

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

ACTION: Final annual specifications and regulatory amendment.

SUMMARY: NMFS announces specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quota and General category effort control specifications for the 2000 fishing year. NMFS also amends the regulations governing the Atlantic HMS fisheries to adjust the date on which the BFT General category fishing season ends; adjust the date on which BFT allocations become available to Atlantic tunas Purse Seine category vessel owners; authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year on a per vessel basis; revise text regarding restricted fishing days (RFDs) in the General category BFT fishery; and revise text regarding authorized gear in the North Atlantic swordfish fishery. These specifications and regulatory amendment are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final specifications are effective July 7, 2000 through May 31, 2001. The final regulatory amendment is effective July 7, 2000.

ADDRESSES: Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale at 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) that was adopted and made available to the public in April 1999. The HMS FMP and the implementing regulations established percentage quota shares for each of the domestic fishing categories of the ICCAT-recommended U.S. BFT landings quota of 1,387 metric tons (mt). These percentage shares were based on allocation procedures that had been developed by NMFS in recent years. NMFS subsequently amended the HMS regulations to remove the 250-mt limit on allocating BFT landings quota to the Purse Seine category (64 FR 58793, November 1, 1999). This rulemaking also reinstated the transferability of partial purse seine vessel quota allocations from one vessel to another, which was inadvertently omitted from the consolidated regulations to implement the HMS FMP.

Further background information and rationale for these specifications and regulatory amendment were provided in the preamble to the proposed specifications and regulatory

amendment (65 FR 33513, May 24, 2000) and are not repeated here. The annual quota specifications allocate the total ICCAT-recommended quota among the several established fishing categories.

Changes From the Proposed Specifications

NMFS proposed the following RFDs for October: October 1, 4, 6, 7, 10, 11, 14, 15, 18, 19, 22, 23, 26, 27, 30, and 31.

Based on consideration of comments received during the comment period, NMFS is implementing the following RFDs for October: October 1, 4, 6, 7, 10, 11, 14, and 15. In addition, now that the 1999 fishing year has ended and revised landings data are available, minor modifications have been made to the 2000 fishing year quotas.

Fishing Category Quotas

NMFS implements U.S. domestic quota allocations for the 2000 fishing year, beginning June 1, 2000, consistent with the HMS FMP and the 1,387 mt U.S. allocation. The percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999, as amended by the Purse Seine category adjustment described earlier, are as follows (tonnage in parentheses corresponds to 1,387 mt total quota): General category—47.1 percent (653.3 mt); Harpoon category—3.9 percent (54.1 mt); Purse Seine category—18.6 percent (258.0 mt); Angling category—19.7 percent (273.2 mt); Longline category—8.1 percent (112.3 mt); Trap category—0.1 percent (1.4 mt); and Reserve—2.5 percent (34.7 mt).

Based on these percentages, and quota adjustments based on overharvests or underharvests in the 1999 fishing year, the adjusted quotas for the 2000 fishing year are as follows: 483.4 mt for the Angling category; 634.3 mt for the General category; 54.1 mt for the Harpoon category; 135.1 mt for the Longline category; 2.4 mt for the Trap category; 271.2 mt for the Purse Seine category; and 34.7 mt for the Reserve.

The Angling category quota is subdivided as follows: School BFT—136.3 mt, with 72.9 mt to the northern area (north of 38°47' N. latitude), 63.4 mt to the southern area (south of 38°47' N. latitude), and 38.3 mt held in reserve; large school/small medium BFT—300.9 mt, with 163.9 mt to the northern area and 137.0 mt to the southern area; and large medium/giant BFT—7.9 mt, with 3.4 mt to the northern area and 4.5 mt to the southern area.

The Longline category is subdivided as follows: 31.5 mt to longline vessels landing BFT north of 34° N. latitude and 103.6 mt to longline vessels landing BFT south of 34° N. latitude.

General Category Effort Controls

For the 2000 fishing year, NMFS implements General category quota subdivisions as established in the HMS FMP, as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the overharvest of the 1999 fishing year General category quota, these percentages are applied to the adjusted coastwide quota for the General category of 624.3 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 374.6 mt are available for the period beginning June 1 and ending August 31; 187.3 mt are available for the period beginning September 1 and ending September 30; and 62.4 mt are available for the period beginning October 1 and ending December 31.

The New York Bight set-aside area is the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. When the coastwide General category fishery has been closed in any quota period, NMFS may publish notification in the **Federal Register** to make available up to 10 mt ww of the quota set aside for the New York Bight area. The daily retention limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period may be carried over for the purpose of renewing the set-aside fishery at a later date.

Attainment of the subquota in any quota period will result in a closure until the beginning of the following quota period. The subquota for the following quota period will be adjusted by any underharvest or overharvest in the previous quota period. Announcements of closures will be filed for publication with the Office of the Federal Register, stating the effective date of closure, and will be disseminated by the Highly Migratory Species (HMS) Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line (978–281–9305 or 888–872–8862) to check the status of the fishery before leaving for a fishing trip.

Persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for BFT of all sizes on the following days in 2000: July 12, 16, 17, 19, 23, 24, 26, 30, and 31; August 2, 6, 7, 9, 11, 12, 13, 14, 16, 20, 21, 23, 27, 28, and 30; September 3, 4, 6, 10, 11, 13, 17, 18, 20, 24, 25, and 27; and October 1, 4, 6, 7, 10, 11, 14, and 15. Persons aboard vessels permitted in the Atlantic Tunas Charter/Headboat category are prohibited from fishing for large medium and giant BFT under the General category quota on the indicated RFDs. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality and are consistent with the objectives of the HMS FMP.

Changes to Regulatory Text

NMFS is revising the regulatory text for clarification and to achieve consistency with the FMP objectives. These changes include specification of fishing seasons, quota adjustments, effort controls, and authorized gear. For background information on these issues, see the preamble to the proposed regulatory amendment (65 FR 33513, May 24, 2000).

General Category Season

NMFS revises the regulatory text to clarify that December 31 is the end date for the General category BFT fishing season.

Purse Seine Category Season

NMFS corrects the regulatory text regarding the Purse Seine category BFT fishing season to indicate that the purse seine vessel allocation of BFT is available starting June 1, and that any BFT caught incidental to fishing operations for other species will be deducted from the vessel's BFT allocation for that fishing year. NMFS also clarifies the regulatory text to indicate that only the directed purse seine fishery for BFT commences on August 15 each year.

Purse Seine Quota Carryover

NMFS amends the regulations regarding annual adjustment of quotas and subquotas to authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year if NMFS determines that a vessel's individual quota has been exceeded or has not been reached.

Restricted Fishing Days

NMFS corrects the regulatory text regarding RFDs to indicate that persons on board a vessel permitted in the General category cannot ''fish for'' BFT on an RFD. In addition, NMFS removes language included in the final consolidated regulations indicating that RFDs apply only when the General category fishery is open. Removing this language will allow NMFS the discretion to implement RFDs on days immediately prior to the reopening of the General category fishery for the following subquota time-period (e.g., September 29 and 30). In issuing a closure notification for any General category subperiod, NMFS will indicate the specific RFDs that would be waived and/or added prior to reopening the fishery.

Authorized Gear

Finally, NMFS corrects text that prohibits the use of bandit gear in the north Atlantic swordfish fishery. In the table appearing at 50 CFR 600.725(v), bandit gear is authorized in the swordfish handgear fishery. Likewise, 50 CFR 635.21(d)(4) authorizes the use of bandit gear to fish for north Atlantic swordfish from vessels issued limited access permits. When the final consolidated HMS regulations were published, the prohibition at 50 CFR 635.71(e)(8) inadvertently omitted bandit gear from the list of authorized gears.

Comments and Responses

NMFS received numerous comments regarding the proposed quota and General category effort control specifications and the regulatory amendments.

Specifications

General Category Quota Subdivision

Comment: NMFS should reallocate the October through December period subquota to the June through August and September periods for better market prices and reduced derby conditions.

Response: NMFS maintains the status quo time period subquota breakdown in these final specifications. Long-term effort controls were addressed in the HMS FMP to achieve a variety of FMP objectives. Specifically, the status quo regime for the General Category assists attainment of optimum yield, and addresses allocation issues by lengthening the season over time and space in a category with high participation and catch rates.

Comment: If NMFS maintains an October fishery, then buy-boats should be allowed again. The fish landed in Chatham are of poorer quality than fish landed elsewhere, and as the Town of Harwich is considering imposing new restrictions, this would improve matters. If observers are necessary, the dealers could pay for them.

Response: NMFS has removed the permit category allowing the use of buy-boats for BFT as it was deemed obsolete. In the proposed rule to consolidate regulations regarding Atlantic HMS species (January 20, 1999, 64 FR 3166) NMFS stated that for the last several years, the retention limit for General category vessels has been set at one fish per day, thus precluding the need to offload BFT at sea. In addition, compliance with applicable vessel and dealer reporting requirements would be difficult to achieve under at-sea transfer conditions. To date, the Town of Harwich has not yet imposed new restrictions. If any new regulations by the Town are implemented it remains unclear how, or even if, the BFT fishery would be impacted. NMFS intends to continue to monitor the situation to consider and address any inconsistencies between the Town's measures and Federal regulations.

2000 Fishing Year Quota Allocations

The HMS FMP addresses many issues regarding the allocation of BFT domestic quota among categories. The comments below address issues other than those regarding allocation percentages.

Comment: The amount of quota proposed to be rolled over in the Angling category due to underharvest of the quota for that category during the 1999 fishing year is very large. NMFS should use the transfer criteria specified in the regulations to make the quota available to other users within the domestic fishery, specifically to the commercial categories, in which each fish landed is reported.

Response: NMFS has added the Angling category underharvest from the 1999 fishing year to the Angling category quota for the 2000 fishing year in accordance with the provisions and criteria of the HMS FMP, which reflects the 5-year balancing period under ICCAT. Due to year-to-year variability in fishing effort and landings of recreational BFT, it is preferable to ensure availability of quota rather than risk overharvest of the quota. Because it is possible that the Angling category may attain this quota in the 2000 fishing year, it is premature to transfer any quota from this category at this time, and NMFS must consider the criteria for transferring quota, as established in the regulations. In addition, Angling category landings data are under review and subject to change.

Comment: NMFS should allocate a small portion of the Angling category quota for recreational spearfishing. Spearfishing has been a historical gear type and was overlooked during the development of the HMS FMP.

Response: NMFS evaluated gear types used in the Atlantic tuna fisheries during the development of the HMS FMP. Currently spearguns are not authorized in the BFT fishery and thus this activity is not allowed. The issue was discussed by the HMS Advisory Panel (AP) during the development of the HMS FMP but no consensus by the HMS AP was reached and no recommendation was transmitted to NMFS. At this time, no additional action is contemplated. However, the HMS AP may wish to discuss this issue again when it next meets.

Comment: NMFS should reinstitute the incidental catch quota for herring purse seine vessels, which occasionally catch BFT incidental to their target species.

Response: NMFS evaluated gear types used in the Atlantic tuna fisheries during the development of the HMS FMP. NMFS may solicit comment on this issue from the HMS Advisory Panel.

Restricted Fishing Days

Comment: Some commenters stated that NMFS should implement RFDs for July through September as scheduled but should not implement October RFDs, especially beyond the first few days of October. October weather alone should dictate when fishermen make fishing trips. Those in support of October RFDs fish in one geographic area. NMFS should not be involved simply for market reasons. If NMFS does implement October RFDs, the pattern should be the same as for July through September. A commenter proposed that NMFS should depart from the Sunday, Monday, Wednesday pattern and alternate the RFDs each year, so that for the days of Sunday through Wednesday, the one day on which fishing is allowed is different each year. Other commenters stated that if NMFS does implement RFDs for the first week of October, it should designate October 5 as an RFD, since otherwise any fish caught on October 5 would arrive in Japan on October 9, when the market is closed.

Other commenters supported the proposed schedule of RFDs and some specifically stated that NMFS should implement October RFDs for consistency with the rest of the schedule, for market reasons, and so

that fishermen have some days to rest. It is not a geographic issue, i.e., designed for those fishing off Chatham, as fishermen often travel to distant fishing areas to participate in the BFT fishery.

NMFS received comment from a tournament director that the RFDs as proposed would coordinate with the tournament schedule.

Finally, some commenters stated that NMFS should not implement RFDs at all. The implementation of RFDs in 1995 was an experiment to lengthen the season; it did not work significantly, and in fact led to poorer prices, so it should be discontinued.

Response: NMFS maintains the schedule of RFDs as proposed from July through September and has modified the schedule for the latter half of October. RFDs, in conjunction with the General category quota subdivision, help achieve HMS FMP objectives to achieve optimum yield (e.g., lengthening the season for market reasons) and address allocation issues. Comments over the past few years regarding the status quo pattern of RFDs have generally been favorable. In addition, maintaining the current pattern and schedule of RFDs provides some benefit to fishermen as it offers a certain level of predictability. However, over the past several years landings have been highest during the first week of October, exacerbating the derby nature of the fishery and contributing to market gluts. Implementing RFDs for the first half of October may help spread out fishing effort, slow the pace of landings, and extend the fishery. However, NMFS recognizes that the weather is unpredictable during this time period for the fishery, particularly in the latter half of October, and that poor weather conditions may limit participation without the need for additional RFDs during this part of the month. Thus, NMFS modifies the proposed schedule of RFDs by removing all RFDs after October 15 and maintains the schedule of RFDs for October 1, 4, 6, 7, 10, 11, 14, and 15.

Comment: If spotter planes are prohibited (except for in the Purse Seine fishery), NMFS should not implement any RFDs.

Response: Currently, spotter aircraft are allowed to participate in the fishery. However, NMFS has published a proposed rule to prohibit spotter aircraft in the BFT fishery, except for the Purse Seine category. If spotter aircraft are prohibited during the course of the fishing season from participating in the BFT fishery, NMFS will determine what other actions, if any, may be necessary at that time.

Regulatory Amendments

General Category Season

Comment: NMFS should implement a General category end-date of December 31 to prevent new BFT fisheries while rebuilding is underway.

Response: NMFS agrees and implements this measure.

Purse Seine Category Season

Comment: NMFS should not change the date on which purse seine vessel owners receive their allocations to June 1 if it means that BFT fishing would begin prior to August 15.

Response: Although the allocation would be made June 1, directed fishing for BFT will continue to start August 15. This amendment is made so as not to preclude Purse Seine category vessels from fishing for other tuna species from June 1 to August 15 of each year.

Purse Seine Quota Carryover

Comment: NMFS should add or subtract underharvest to, or overharvest from, individual purse seine IVQs.

Response: NMFS agrees and implements this measure.

Restricted Fishing Days

Comment: It is important to honest fishermen that NMFS reinstate language prohibiting ''fishing for'' BFT on RFDs in order to prevent the fishing for, and holding of, BFT in slush tanks until the next open day.

Response: NMFS agrees and implements this measure.

Comment: The language as proposed gives NMFS too much latitude in implementing additional RFDs; the authority should be limited to a few days before the start of the next time period.

Response: NMFS has considered this comment but maintains the provision as proposed to facilitate the enforcement of fishery openings and closures.

Timing of Rulemaking

Comment: The specifications should be final before the start of the season. Considering part of the reason NMFS changed the fishing year was to have time to implement the ICCAT recommendations, the proposed specifications should be months earlier so that decisions about permit category can be made before May 15.

Response: NMFS agrees. Part of the rationale for the adjustment of the fishing year from a calendar year to one that begins June 1 was to provide adequate time for the development of proposed and final specifications after the November ICCAT meeting. The large workload within the agency this spring delayed publication of the proposed specifications. However, as the measures contained in the specifications do not change the status quo as presented in the HMS FMP (except for the addition of RFDs in October), NMFS believes that there was minimal, or no, impact on decisions regarding choice of permit categories.

Classification

These final specifications are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The AA has determined that these specifications are necessary to implement the recommendations of ICCAT and are necessary for the management of the Atlantic tuna fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications and proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for that certification. Accordingly, an initial regulatory flexibility analysis was not prepared for the proposed specifications and proposed regulatory amendment.

These specifications and regulatory amendment impose no requirements with which fishermen need time to come into compliance, and are necessary to help ensure that the United States' actions are consistent with its international obligations under ICCAT. Therefore, NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). NMFS will rapidly communicate these final specifications through the FAX network.

The final specifications and regulatory amendment have been determined to be not significant for purposes of E.O. 12866. The specifications set 2000 fishing year BFT fishing category quotas and General category effort controls. The specifications are similar to those set for the 1999 fishing year as established by the HMS FMP. The regulatory amendments will not significantly change the operations of any HMS fishery. Taken together, the quota and effort control specifications and the proposed regulatory amendments are not expected to increase endangered species or marine mammal interaction rates. NMFS reinitiated formal consultation for all Atlantic HMS

commercial fisheries on November 19, 1999, under section 7 of the Endangered Species Act. NMFS issued a Biological Opinion on June 30, 2000 and concluded that the Atlantic pelagic longline fishery for tunas, swordfish and sharks is likely to jeopardize the continued existence of leatherback and loggerhead sea turtles, and may adversely affect but is not likely to jeopardize the continued existence of other listed and protected species. Additionally, NMFS concluded that other components of the Atlantic tunas fisheries (purse seine, handgear, traps) may adversely affect but are not likely to jeopardize the continued existence of listed and protected species. The BO determined reasonable and prudent alternatives to avoid jeopardizing the continued existence of any protected species, and incorporated an incidental take statement listing reasonable and prudent measures and terms and conditions to implement those measures that would serve to reduce takes. NMFS will address the requirements of the BO in subsequent rulemakings and by other non-regulatory means. In the interim, these BFT quota specifications, effort controls and revised regulations are not likely to increase takes of listed species and would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources.

The area in which fishing for BFT takes place has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, and the NMFS Highly Migratory Species Division. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: July 7, 2000.

Donald R. Knowles,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.23, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

* * * * *

3. In § 635.26, paragraph (a)(1) is revised to read as follows:

§ 635.26 Catch and release.

(a) *BFT.* (1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a tag and release program, provided the person tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all persons aboard that vessel are ineligible to fish under the tag-and-release program.

* * * * *

4. In § 635.27, paragraph (a)(1)(i)(C), the second sentence of (a)(4)(i), the second sentence of (a)(4)(ii), the first sentence of paragraph (a)(4)(iii), and paragraph (a)(9)(i) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through December 31—10 percent.

* * * * *

(4) * * *

(i) * * * The directed purse seine fishery for BFT commences on August 15 each year.

(ii) * * * The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on June 1.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(9)(i) of this section. * * *

* * * * *

(9) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the Reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year.

* * * * *

5. In § 635.71, paragraph (e)(8) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear.

* * * * *

[FR Doc. 00–17620 Filed 7–7–00; 3:26 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 070700A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 9, 2000, through 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Eastern Aleutian District was established as 2,886 metric tons (mt) by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Eastern Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,636 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Eastern Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17601 Filed 7–7–00; 3:25 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 134
Wednesday, July 12, 2000

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1075]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Public hearings and request for comments.

SUMMARY: The Board will hold public hearings on predatory lending practices in the home-equity lending market, and invites consumers, consumer advocacy organizations, lenders, and other interested parties to attend and to provide written comments on relevant issues. The hearings will be held pursuant to the Home Ownership and Equity Protection Act of 1994, which amended the Truth in Lending Act to impose disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The act directs the Board to examine the home-equity loan market and the adequacy of existing Truth in Lending provisions in protecting the interests of consumers.

DATES: *Hearings.* The hearings are scheduled as follows:

1. Charlotte, North Carolina, July 27, 2000, 9 a.m. to 4:30 p.m.

2. Boston, Massachusetts, August 4, 2000, 9 a.m. to 4:30 p.m.

3. San Francisco, California, September 7, 2000, 9 a.m. to 4:30 p.m.

Comments. Comments from persons unable to attend the hearings or wishing to submit written views on the issues raised in this notice must be received by Friday, September 1, 2000.

ADDRESSES: *Hearings.* Hearings will be held at the following locations:

1. Charlotte, North Carolina—Federal Reserve Bank of Richmond, Charlotte Branch, 530 East Trade Street.

2. Boston, Massachusetts—Federal Reserve Bank of Boston, 600 Atlantic Street.

3. San Francisco, California—Federal Reserve Bank of San Francisco, 101 Market Street.

Comments. Comments on the questions listed in this document should refer to Docket No. R–1075, and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; for the hearing impaired *only,* contact Janice Simms, Telecommunication Device for the Deaf, (202) 872–4984.

For directions and other matters relating to the meeting facilities in Charlotte, contact Mary Chick, (704) 358–2495; in Boston, Cynthia Reardon, (617) 973–3512; in San Francisco, Lena Robinson, (415) 974–2422.

SUPPLEMENTARY INFORMATION:

I. Background

In 1994, the Congress enacted the Home Ownership and Equity Protection Act of 1994 (HOEPA) as an amendment to the Truth in Lending Act (TILA). HOEPA was a response to anecdotal reports of abusive lending practices whereby unscrupulous lenders made unaffordable home-secured loans to ''house-rich but cash-poor borrowers.'' These cases frequently involved elderly and sometimes unsophisticated homeowners who were targeted for loans with high rates and fees and repayment terms that were difficult or impossible for the homeowners to meet. Oftentimes the transactions involved fraud or unlawful misrepresentations by lenders or brokers.

HOEPA does not prohibit creditors from making any type of home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, the act identifies a class of high-cost mortgage loans through rate and fee triggers. For transactions covered by HOEPA, creditors must provide abbreviated disclosures to consumers at least three days before the loan is closed, in addition to the disclosures generally required by TILA. When combined with TILA's three-day right of rescission after the loan closing, the HOEPA disclosures afford consumers a minimum of six days to consider key loan terms before finally deciding to enter into a transaction. Transactions covered by HOEPA are also subject to substantive limitations that prohibit certain terms from being included in the loan agreement.

HOEPA directs the Board, in consultation with its Consumer Advisory Council, to conduct public hearings periodically to examine home-equity loans in the marketplace and consider the adequacy of federal laws (including HOEPA) in protecting consumers—particularly low-income consumers. In June 1997, within two years after HOEPA became effective, the Board held hearings on home-equity lending and HOEPA. The results of those hearings were summarized and submitted to the Congress by the Board and Department of Housing and Urban Development (HUD) in July 1998, in a joint report concerning reform of TILA and the Real Estate Settlement Procedures Act.

Predatory lending practices in home-secured loans continue to receive attention from the Congress and regulatory agencies. The available information concerning predatory lending is essentially anecdotal; there is no ready method for measuring the amount of predatory lending or determining how prevalent a problem it represents. There are enough anecdotal reports, however, to suggest that predatory lending continues to be a problem. Abusive practices may involve, among other things, excessive fees and interest rates, unnecessary insurance, and fraud. Borrowers saddled with unaffordable payments can lose their homes. Excessive up-front fees combined with frequent refinancings

(often referred to as ''loan flipping'') may also strip the equity from consumers'' homes.

Given the wide range of practices that predatory lending may involve, a multifaceted approach to dealing with the problem, including both regulatory and nonregulatory strategies, is likely to be the most effective. This includes strengthening enforcement of current laws, voluntary industry action, community outreach efforts, and consumer education and counseling. Several bills taking different approaches to addressing predatory lending have been introduced in the Congress. Several states have enacted or are considering legislation. The Board has convened a nine-agency working group, including the five federal agencies that supervise depository institutions, HUD, the Office of Federal Housing Enterprises Oversight, the Department of Justice, and the Federal Trade Commission. The aims of the group are to tighten enforcement of existing statutes and to establish a coordinated approach to addressing predatory practices.

On May 24, the Board presented testimony at a hearing held by the House Committee on Banking and Financial Services on predatory lending and possible remedial actions. HUD and the Department of the Treasury have convened a National Task Force on Predatory Lending. The primary mission of the Task Force has been to collect information about predatory lending, provide data on the impact of predatory practices, and comment on existing legislative proposals for reform in order to provide a basis for HUD and Treasury to make recommendations for legislation to the Congress. To solicit information about local and national aspects of the predatory lending problem, HUD and Treasury held five pubic forums in Los Angeles, Chicago, New York, Atlanta, and Baltimore. On June 20, HUD and Treasury issued a report on their findings, that discusses possible ways to curb predatory lending and contains recommendations to the Congress regarding possible legislative action and to the Board regarding the exercise of the Board's regulatory authority under HOEPA.

The Board's home-equity hearings under HOEPA will be primarily focused on the Board's regulatory authority under that act, and specific ways that the Board might consider exercising that authority. As described below, the Board is authorized to make some adjustments to HOEPA's high-cost triggers that could affect the scope of the act's coverage. The Board is also directed by HOEPA to prohibit certain acts and practices in connection with mortgage loans if the Board makes the finding required by the statute. Based on information gathered during recent public hearings, the interagency discussions, and meetings with industry and consumer representatives, the Board has developed a series of questions for discussion at the HOEPA hearings and for public comment. These questions are intended to solicit views on the ways that the Board might exercise its authority, and will be used to focus the discussion at the HOEPA hearings on possible regulatory approaches to deter predatory lending.

The Truth in Lending Act and HOEPA

The Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is intended to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the ''finance charge'') and as an annual percentage rate (the ''APR''). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, amends TILA to impose disclosure requirements and substantive limitations on certain home-secured loans (closed-end installment loans) with rates and fees above a specified amount. A loan is covered by HOEPA if (1) the APR exceeds the rate for treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400 (adjusted annually based on the consumer price index). HOEPA is implemented by section 32 of the Board's Regulation Z (12 CFR 226.32), effective in October 1995. 60 FR 15463, March 24, 1995.

HOEPA does not prohibit creditors from making any home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, HOEPA layers disclosure and timing requirements onto the requirements already imposed for consumer credit transactions. Creditors offering HOEPA-covered loans must provide abbreviated disclosures to consumers three days before the loan is closed. The disclosures provide that consumers are not obligated to complete the closing, remind borrowers that they could lose their home if they fail to make payments, and state a few key cost disclosures, including the APR, the regular payment, and, if the loan has a variable rate, a ''worst case payment'' if rates increase as high and quickly as possible under the loan agreement.

In addition, creditors making HOEPA-covered loans are prohibited from including in their loan agreements, among other provisions: (1) Balloon payments in loans with maturities of less than five years, (2) payment schedules that result in negative amortization, (3) higher default interest rates, and (4) prepayment penalties in most instances. Consumers entering into a HOEPA-covered loan may rescind the transaction for up to three years after closing if creditors fail to provide the early disclosures or if they include a prohibited term in the loan agreement.

Home-purchase loans are not covered by HOEPA. Although reverse mortgages are exempt from the HOEPA requirements imposed for traditional mortgages, reverse mortgages are subject to an alternative detailed disclosure scheme under HOEPA (implemented by section 33 of Regulation Z). Home-equity lines of credit (open-end credit) are also exempt from HOEPA, as congressional hearings preceding enactment did not reveal evidence of abusive practices connected with open-end home-equity lending.

In June 1997, the Board held hearings on home-equity lending and HOEPA in Los Angeles, Atlanta, and Washington, DC. Participants were asked to address several topics, including the effect of HOEPA on homeowners seeking home-equity credit and on credit opportunities in the communities targeted by the legislation (for example, whether there had been changes to the volume or cost of home-equity installment loans); the effectiveness of the disclosures and suggestions for improvements; and whether any exemptions or prohibitions would be appropriate for the Board to consider under its HOEPA rulemaking authority. 62 FR 23189, April 29, 1997.

Those testifying at the hearings generally concurred that it was too soon after HOEPA's enactment to determine the effectiveness of the new law. However, consumer representatives reported continuing abusive practices by home-equity lenders of all degrees of sophistication. The hearings formed the basis for a detailed analysis of the problem of abusive lending practices in mortgage lending contained in a July

1998 report to the Congress by the Board and HUD on possible reforms to TILA and the Real Estate Settlement Procedures Act regarding mortgage-related disclosures. (The 1998 joint report is available at the Board's website address: www.federalreserve.gov/boarddocs/press/general/1998.) Chapter 6 of the report suggested a multifaceted approach to curbing predatory lending practices, including some legislative action, stronger enforcement of current laws, and nonregulatory strategies such as community outreach efforts and consumer education and counseling. (See also Chapter 2 at page 17, Chapter 7 at page 76, and Appendix D.)

II. Public Hearings

Since HOEPA's enactment, the volume of home-equity lending has increased significantly. This overall growth in home-equity lending has been accompanied by a sharp boost in the subprime mortgage market. HUD reports that the number of subprime home-equity loans has increased from 80,000 in 1993 to 790,000 in 1998.

The growth in subprime lending brought a substantial increase in the availability of credit to borrowers having less-than-perfect credit histories and to other consumers who do not meet the underwriting standards of prime lenders. Because consumers who obtain subprime mortgage loans have, or perceive they have, fewer credit options than other borrowers, they may be more vulnerable to unscrupulous lenders or brokers. With the increase in the number of subprime loans, consumer advocates have been concerned for some time about the potential for a corresponding increase in the number of predatory loans. Some industry representatives have noted, however, that the trend toward securitizing subprime mortgages has served to standardize creditor practices and to limit the opportunity for widespread abuse.

To address concerns about predatory lending and consider approaches the Board might take in exercising its regulatory authority under HOEPA, the Board has scheduled three one-day hearings in Charlotte (Thursday, July 27), Boston (Friday, August 4), and San Francisco (Thursday, September 7). The hearings will seek statements from the public about home-equity lending in general, but will focus specifically on collecting testimony on the ways that the Board might use its rulewriting authority under HOEPA to address predatory lending practices in the home-equity market. To focus the discussion at the hearings, interested parties wishing to present oral statements at the hearings (and persons submitting written comments to the Board) are asked to address the issues set forth below, as applicable:

A. Adjusting the HOEPA Triggers

HOEPA covers mortgage loans that meet one of the act's two ''high-cost'' triggers. A loan is covered if (1) the APR exceeds the rate for treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. The Board is required to adjust the $400 threshold annually, based on the consumer price index; for 2000 the amount is $451.

1. APR Trigger

HOEPA authorizes the Board to adjust the HOEPA trigger by 2 percentage points from the current standard of 10 percentage points above the U.S. Treasury securities with comparable maturities. Some consumer advocates and others have suggested that, based on the current APR trigger, only a small percentage of subprime mortgage loans are covered by HOEPA. They contend that lowering the APR trigger would allow HOEPA's protections to be extended to a broader class of transactions.

- Would lowering the APR trigger to 8 percentage points be effective in furthering the purposes of HOEPA, and if so, how?
- If the APR trigger were lowered, would such action have any significant impact on the availability or cost of subprime mortgage loans?

The Board also solicits comment on any available data regarding the percentage of subprime mortgage loans covered under the existing APR trigger, and the percentage of transactions that would be affected by lowering the trigger by 2 percentage points.

2. Points and Fees Trigger

A loan is covered by HOEPA if the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. For this purpose, ''points and fees'' include all items included in the finance charge and APR except interest, and all compensation paid to mortgage brokers. The act specifically excludes reasonable closing costs that are paid to unaffiliated third parties. HOEPA also authorizes the Board to add ''such other charges'' to the points and fees test as the Board deems appropriate. Accordingly, comment is solicited on what fees, if any, should be added to the calculation. In particular, comment is requested on the following:

a. *Credit Insurance:* Premiums paid for credit insurance that a borrower is *required* to purchase are finance charges that are currently included in both the APR and the points and fees test under HOEPA. But premiums paid for optional credit life insurance currently are not included in the points and fees test. Some consumer advocates assert that because these premiums are excluded, predatory lenders may avoid HOEPA coverage by ''packing'' loans with high-priced credit insurance that represents a significant source of fee income, in lieu of charging fees that would be included under the current HOEPA trigger.

- What would be the effect of including lump-sum premiums collected at closing for optional credit insurance in HOEPA's points and fees test? Should such premiums be included only if they are paid to the creditor or an affiliate of the creditor, or only to the extent that the creditor receives compensation in connection with the sale of the insurance?

b. *Prepayment Penalties:* In some cases, prepayment penalties may provide fee income that is an additional incentive for creditors to encourage frequent refinancings that are not in a consumer's interest. If the consumer must pay a prepayment penalty to the same creditor that is refinancing the loan, the prepayment fee could be viewed as a cost of the new transaction.

- What would be the effect of including a prepayment penalty (assessed on the original loan) in HOEPA's points and fees test for the new loan when the loan is refinanced with the same creditor (or an affiliate)?

c. *Points:* Consumers who refinance their loans generally pay points on the entire refinanced amount.

- What would be the effect of adding any points paid by the consumer for the existing loan to the points and fees test when the same creditor (or an affiliate) refinances the loan within a specified time period?

The current points and fees test under HOEPA is complex. The statute allows many closing costs to be excluded from the calculation if they are reasonable and paid to third parties. The Board solicits comments on whether a better approach would be to recommend a statutory amendment that would include all closing costs in the points and fees test.

B. Restricting Certain Acts or Practices Under HOEPA

The hearings will explore how the Board's regulatory authority under HOEPA to prohibit specific practices can be used to curb predatory lending.

Under HOEPA, the Board is authorized to prohibit acts and practices:

• *In connection with mortgage loans*—if the Board finds the practice to be unfair, deceptive, or designed to evade HOEPA; and

• *In connection with refinancings of mortgage loans*—if the Board finds that the practice is associated with abusive lending practices or otherwise not in the interest of the borrower.

Comment is invited on the following specific approaches to dealing with predatory lending practices, and whether any new requirements or prohibitions should apply to all mortgage transactions, only to refinancings, or only to HOEPA-covered refinancings. Both regulatory and legislative proposals should be discussed.

1. *Credit insurance.* Premiums for credit insurance are often collected from the borrower at closing and added to the loan amount, increasing the total finance charges paid by the consumer. Consumer advocates express concern about high-pressure sales tactics, which may mislead consumers about whether the insurance is required. The Board previously recommended that the Congress consider prohibiting the advance collection of premiums for credit insurance policies in connection with HOEPA loans. If no statutory prohibition is adopted, should the Board regulate the conditions under which such policies are sold or financed? For example:

• What would be the effect of the Board's requiring the sale of single-premium policies to be accompanied by a disclosure that the coverage may also be available with periodic premiums? What other disclosures might be helpful?

• To address concerns about ''insurance packing,'' what would be the effect of the Board's requiring that the sale of single-premium policies include a disclosure at the time of purchase of how unearned premiums will be rebated if the policy is cancelled or the loan is paid in full early?

• What would be the effect of requiring notification to borrowers, after the loan closing, of their right to cancel the policy and obtain a refund?

• What would be the effect of regulations prohibiting creditors from selling single-premium insurance products until after loan closing?

2. *Unaffordable loans.* Under HOEPA a creditor may not engage in a pattern or practice of extending credit based on the collateral if (given the consumer's current and expected income, current obligations, and employment status) the consumer will be unable to make the scheduled loan payments.

• Would additional interpretative guidance on the ''pattern or practice'' requirement be useful, or are case-by-case determinations more appropriate? If additional guidance would be useful, what elements of the requirement should the guidance address?

• What regulatory standards could the Board adopt for determining whether a creditor has considered the consumer's ability to repay the loan in order to satisfy this requirement?

3. *Refinancing lower-rate loans.* When a consumer seeks a second mortgage to consolidate debts or to finance home improvements, some creditors also require the existing first mortgage to be paid off as a condition of providing the new funds. This ensures that the creditor will be the senior lien-holder, but may increase significantly the points and fees paid for the new loan. Is regulatory action appropriate to protect consumers from abuses and, if so, what type of action could be taken without restricting credit in legitimate transactions?

4. *Balloon Payments.* Depending on the circumstances, mortgages with a balloon payment feature may be attractive to some borrowers, but may harm other consumers. HOEPA currently prohibits balloon payments for high-cost loans that have terms of less than 5 years. Lenders that price their loans just below HOEPA's triggers, however, might include balloon payments that force consumers to refinance the loan and pay additional points and fees.

• For loans *not* covered by HOEPA's restriction on balloon payments, are any restrictions or additional disclosures needed in connection with balloon payments in order to prevent abusive practices?

• To avoid evasions of HOEPA's restrictions on balloon payments, what would be the effect of the Board's prohibiting ''payable on demand'' clauses for HOEPA loans unless such a clause is exercised in connection with a consumer's default? (A similar limitation already exists for home-equity lines of credit.)

5. *Prepayment penalties.* Prepayment penalties allow creditors to recover their transaction costs if loans are prepaid earlier than expected. That rationale may not be relevant in cases where high rates and up-front fees are charged. In such cases, the penalty might be used to deter the consumer from refinancing the loan on more favorable terms.

• Is it feasible to limit the use of prepayment penalties to transactions where consumers receive, in return, a benefit in the form of lower up-front costs or lower interest rates? How might the existence of such benefits be measured?

6. *Foreclosures.* Consumers who have been victims of abusive practices must be afforded adequate opportunity to assert their rights in order to avoid unwarranted foreclosures. State law and local practice generally govern the procedures followed for foreclosures. Some states require actual notice to the consumer, but in other states notice by publication is sufficient. Even when consumers do receive notice, they may not get adequate information about their legal options.

• What would be the effect of setting minimum federal standards for foreclosures involving a consumer's primary dwelling? For example, a creditor might be required to provide the consumer with actual notice of: (1) The applicable foreclosure procedures; (2) any legal rights the consumer may have to avoid the foreclosure; and (3) the specific amount that, if paid in accordance with the notice, will terminate the foreclosure.

7. *Misrepresentations regarding borrower's qualifications.* There is some concern that many borrowers who obtain high-cost loans may actually qualify for lower cost credit. Some brokers or creditors may provide consumers with false or materially misleading information that the consumer does not qualify for a lower cost loan based on the creditor's underwriting criteria. Such a practice generally would be illegal under state laws that protect against fraud and deception. What benefit to consumers might be achieved if the Board issued a rule that prohibited such misrepresentations as unfair and deceptive under HOEPA?

8. *Reporting borrowers' payment history.* Some creditors do not report to consumer reporting agencies subprime borrowers' good payment history in order to avoid having the borrowers solicited by competitors for a refinancing on more attractive terms. What would be the effect of requiring creditors that choose not to report borrowers' positive payment history to disclose that fact?

9. *Referral to credit counseling services.* What regulatory action would better enable consumers in general, or HOEPA borrowers in particular, to take advantage of any available credit counseling services?

10. *HOEPA disclosures.* In their 1998 report to the Congress, the Board and HUD recommended amendments to the required disclosures, including adding references to the availability of credit

counseling, using more ''user-friendly'' text in the narrative reminders about the potential consequences for not making payments, and requiring the consumer's monthly income to be disclosed in close proximity to the consumer's monthly payment. Comment is requested on those recommendations. Comment also is solicited on whether additional information in the current HOEPA disclosures would benefit consumers. For example:

- The consumer must receive HOEPA disclosures three days before loan closing, specifying the APR and monthly payment amount. Due to the marketing practices of some lenders, consumers may not be aware of high up-front costs that will be financed. What would be the effect of the Board's requiring that the disclosure also include additional information, such as the total loan amount on which the disclosed monthly payment is based?

- For HOEPA loans, what would be the effect of requiring that consumers receive a complete Truth in Lending disclosure statement three days before closing?

11. *Open-end home equity lines.* HOEPA does not cover home-equity lines of credit. Is there evidence that lenders are using open-end credit lines to evade HOEPA? If so, what benefit might be derived from prohibiting the practice of structuring a home-secured loan as open-end credit in order to evade the provisions of HOEPA? How could such practices be identified and what limitations on these practices would be appropriate to effect the purposes of HOEPA?

Community Outreach and Consumer Education

In addition to issues concerning the Board's regulatory authority under HOPEA, views will also be elicited at the hearings about nonregulatory approaches to curbing predatory lending, such as community outreach and consumer education. Accordingly, the Board seeks comment on the following:

What community outreach activities and consumer education efforts are being pursued currently? Which types of products, programs, and delivery systems have been most effective? What other strategies might be implemented to reach the targeted populations? How might outreach and education efforts be tailored to address some lenders' and brokers' aggressive marketing practices? What role can government agencies play in increasing the effectiveness of these programs?

Additional Data

The Board seeks information about any studies or data pertaining to subprime lending or HOEPA loans that would be useful in determining how the Board might use its regulatory authority under HOEPA. For example, are there data regarding the percentage of HOEPA loans that result in foreclosures? Are there data regarding the effect of HOEPA disclosures showing the percentage of transactions cancelled by borrowers based on disclosures provided before closing?

III. Form of Statements and Comments

These hearings are open to the public to attend. Invited speakers will participate in panel discussions. In addition, about two hours is reserved for brief statements by other interested parties, starting at approximately 2:30 p.m. To allow as many persons as possible to offer their views during this period, oral statements should be brief (five minutes or less); written statements of any length may be submitted for the record. Interested parties who wish to participate during this ''open-mike'' period are asked to contact the Board in advance of the hearing date, to facilitate planning for this portion of the hearings. The order of speakers generally will be based on their registration at the hearing site on the day of the hearing.

Comment letters should refer to Docket No. R–1075, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

By order of the Board of Governors of the Federal Reserve System, July 6, 2000.

Jennifer J. Johnson,

Secretary to the Board.

[FR Doc. 00–17520 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 19, 122, 123, 127, 141 and 142

RIN 1515–AC57

General Order Warehouses

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This proposal is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are proposed to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

DATES: Comments must be received on or before September 11, 2000.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gerard Bradley, Office of Field Operations, 202–927–0765.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103–182; December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in

general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse would then have to arrange for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the **Federal Register** (63 FR 51283) on September 25, 1998, as T.D. 98–74.

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unlading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in §§ 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by this document, Customs is proposing that a new class of bonded warehouse, a Class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in § 127.1, Customs Regulations (19 CFR 127.1). It is further proposed that a Class 3, 4, or 5 bonded warehouse, as described in § 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), may likewise be used for the deposit of general order merchandise, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. Section 19.1, Customs Regulations (19 CFR 19.1), would be amended as necessary to address these matters.

Class 1 warehouses, which are premises owned or leased by the Government for the deposit of unentered, seized or unclaimed merchandise, would, however, be retained as such, should the exigencies of the service as determined by the applicable port director require their occasional use.

As already indicated, the application criteria set forth in § 19.2 would apply as well to a warehouse where general order merchandise is to be sent. In addition, as a condition for approval of the application to establish a warehouse facility, at the discretion of the port director, minimum space requirements could be imposed for the storage of general order merchandise. The port director would need to post an announcement of these requirements by a written notice at the customhouse, and by any appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

Furthermore, § 19.2(f) would be amended to provide, in the case of applications from a business entity to establish a bonded warehouse, that Customs may require the submission of fingerprints from all employees of the business entity, as opposed to only those of all officers and managing officials. This requirement would apply to applications generally to establish a Customs bonded warehouse, including a general order warehouse. In this regard, there is a reasonably perceived need under the circumstances for a more thorough, comprehensive scrutiny of applicants, consistent with Customs movement toward a post-audit environment and the spirit of ''shared responsibility'' embodied in the Customs modernization provisions of the North American Free Trade Agreement Implementation Act.

Additionally, a general order warehouse would have to satisfy the inventory and recordkeeping requirements in § 19.12, Customs Regulations (19 CFR 19.12). However, the warehouse would have to do so through an automated inventory control and recordkeeping system. Existing Class 3, 4 and 5 warehouses that handle general order merchandise would be allowed a reasonable ''phase-in'' period (specifically, 2 years) after which their recordkeeping systems, at least insofar as they cover general order merchandise, must likewise be automated. Section 19.12 would be revised accordingly.

To this end, Customs has recently seen an increase in the quantity of unentered, unclaimed merchandise being sent into general order, as discussed above. Requiring an automated inventory system for such merchandise would enhance effectiveness in managing and monitoring the greater number of general order transactions, and thus augment the ability to track and safeguard this merchandise, which would benefit both the importing community as well as the Government. Specifically, an automated system would assist importers of unentered cargo by enabling its more rapid location and the faster resolution of any problems associated with the entry and clearance of the cargo. Also, as noted, it would help protect the potential interest of the Government in the property, given that, generally speaking, if unentered property remains unclaimed for 6 months from the date of its importation, the title to such property may vest in the United States, and the property may be retained for official Government use, in accordance with 19 U.S.C. 1491(b) (see *infra*).

As is currently the case, the proprietor of a general order warehouse must arrange for the transportation of the merchandise to, and its storage at, the warehouse facility. It is observed that the warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, that covers the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry).

Sections 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), would be similarly amended in conformance with this latter, existing requirement. Also, for editorial purposes, in § 19.9, the term ''bonded carrier'' would be substituted in place of ''cartman or lighterman''.

In those cases where the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party would be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

On the other hand, if Customs finds that the proprietor cannot accept the goods because they are required to be exported or destroyed, or for other good cause, the goods would remain in the custody of the arriving carrier or in the custody of any party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry. In the event that merchandise cannot be accepted into a general order warehouse, and its exportation or destruction is required, as is the case with certain of the special categories of merchandise enumerated in § 127.28, Customs Regulations (19 CFR 127.28), the carrier or other party would be responsible under bond for exporting or destroying the goods, as necessary.

To implement the foregoing requirements, §§ 4.37, 122.50 and 123.10 would be further amended accordingly. In addition, § 127.13, Customs Regulations (19 CFR 127.13), would be amended consistent with §§ 4.37, 122.50 and 123.10.

Furthermore, where the warehouse proprietor has taken merchandise into his custody, the proprietor would assume the responsibility and expense for the destruction of the merchandise, in the event that such destruction is found to be warranted under the circumstances (*i.e.,* where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)). The port director would authorize such destruction on a CF 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs. However, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction. Section 127.14, Customs Regulations (19 CFR 127.14), would be revised to include these additional requirements.

Also, the general authority citation for part 127, Customs Regulations (19 CFR part 127), appearing after its table of contents, would be revised, and specific authority citations would be added for certain regulatory sections in part 127 whose authority is not already included in the general authority citation for the part. Currently, the specific statutory authority citations for numerous regulatory sections in part 127 are set forth in parentheses immediately following the text of the sections. To eliminate unnecessary repetition, these parenthetical citations of authority appearing after the individual sections would be deleted.

Mod Act Changes; Title to Unclaimed Merchandise Vesting in Government

In addition, § 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made to 19 U.S.C. 1491 under section 659 of the Mod Act. Section 1491 previously provided that unclaimed and abandoned merchandise would be sold at public auction.

However, 19 U.S.C. 1491, as amended by section 659 of the Mod Act, now provides that, as an alternative to selling unclaimed and abandoned merchandise at public auction, the title to the merchandise may instead vest in the United States following notice to all known interested parties, unless the merchandise is timely entered or withdrawn for consumption and all duties, taxes, fees, charges and other expenses accruing on the merchandise are paid. As amended, 19 U.S.C. 1491 also provides that in the event that title to such merchandise does vest in the Government, Customs may retain the property for its own official use, transfer the property to any other Federal, state or local agency, destroy the property, or otherwise dispose of it.

Moreover, where any party who lost title to, or a substantial interest in, the merchandise, by virtue of title having vested in the Government, can establish such title or interest, section 1491, as amended, provides that the party, upon filing a timely and proper petition, may be paid the amount that it is believed the party would have received had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under 19 U.S.C. 1493.

In this latter regard, 19 U.S.C. 1493 provides that any surplus of proceeds from the sale of unclaimed and abandoned merchandise, that remains after the payment of certain enumerated charges, expenses, duties, taxes and fees, will be deposited in the Treasury, unless a proper claim for the surplus is filed with Customs.

Time Limit Within Which To Make Entry; Conforming Changes

In conformance with the changes already made under T.D. 98–74 to §§ 4.37, 122.50, and 123.10, Customs Regulations, as discussed above, §§ 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), would likewise be changed to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Also, the reference to entry having to be made ''by the consignee'' would be removed from these sections, inasmuch as the entry law (see 19 U.S.C. 1484(a)) no longer requires this.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

The proposed amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the proposed amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria

for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this notice of proposed rulemaking have in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515–0220 (Notification regarding imported merchandise or baggage for which entry has not been made). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The remaining collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This collection of information is contained in §§ 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers and carriers.

Estimated total annual reporting and/or recordkeeping burden: 6600 hours.

Estimated average annual burden per respondent/recordkeeper: 33 hours.

Estimated number of respondents and/or recordkeepers: 200.

Estimated annual frequency of responses: 20,000.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the same time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be appropriately revised upon adoption of the proposal as a final rule.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

It is proposed to amend parts 4, 19, 122, 123, 127, 141, and 142, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141 and 142), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * *

2. It is proposed to amend § 4.37 by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 4.37 General order.

* * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general and relevant specific authority citations for part 19 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

* * * * *

2. It is proposed to amend § 19.1 by adding a heading to paragraph (a), by revising paragraph (a)(1), by adding a new paragraph (a)(10), by adding a heading to paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* * * *

(1) *Class 1.* Premises owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises will be held under ''general order.''

* * * * *

(10) *Class 11.* Bonded warehouses, known as ''general order warehouses'', established for the storage and disposition exclusively of general order merchandise as described in § 127.1 of this chapter.

(b) *Manipulation.* * * *

(c) *General order.* General order merchandise as described in § 127.1 of this chapter will be stored and disposed of in a Class 11 warehouse. However, general order merchandise may also be sent to a warehouse of Class 3, 4, or 5, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. It is proposed to amend § 19.2 by adding a new paragraph (d), and by revising the second sentence of paragraph (f), to read as follows:

§ 19.2 Applications to bond.

* * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on Standard Form 87 at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on Standard Form 87, of all employees of the business entity.

4. It is proposed to amend § 19.9 by revising paragraph (a) to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The general order warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, will be reported to the port director within two working days of the joint determination.

* * * * *

5. It is proposed to amend § 19.12 by revising the introductory text in paragraph (a) to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor of a Class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing Class 3, 4, or 5 warehouses as described in § 19.1 certified before [the date this rule becomes final] to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from [the date this rule becomes final]. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. It is proposed to amend § 122.50 by revising the heading, by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 122.50 General order merchandise.

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the

custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. It is proposed to amend § 123.10 by revising the heading, by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

§ 123.10 General order merchandise.

* * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 127—GENERAL ORDER, UNCLAIMED AND ABANDONED MERCHANDISE

1. The general authority citation for part 127 would be revised, and specific sectional authority citations would be added, to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. It is proposed to amend part 127 by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 127.1, 127.2, 127.11 through 127.14, 127.21, 127.23 through 127.29, and 127.31 through 127.37.

3. It is proposed to amend § 127.13 by revising paragraph (a) to read as follows:

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A Class 11 bonded warehouse or warehouse of Class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * *

4. It is proposed to amend § 127.14 by revising paragraph (a) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition.* (1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.* (i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (see § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (see § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the

warehouse proprietor must first make a reasonable effort under bond (see § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * *

5. It is proposed to amend part 127 by adding a new subpart E to read as follows:

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Commissioner of Customs, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

(1) Importer, if known;

(2) Consignee, if name and address can be ascertained;

(3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and

(4) Any other known interested parties.

(c) *Appraisement of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the surplus proceeds that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactory proof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (see § 127.36). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to revise § 141.5 to read as follows:

§ 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 142.2 by revising paragraph (a) to read as follows:

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

* * * * *

Approved: May 19, 2000.

Raymond W. Kelly,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–17639 Filed 7–11–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103115–00]

RIN 1545–AX90

Bad Debt Reserves of Thrift Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of proposed regulations.

SUMMARY: This document withdraws proposed regulations amending the income tax regulations. This action is taken to remove from the IRS' inventory of regulations projects certain proposed regulations that will not be published in final form because under a subsequent amendment the underlying statute does not apply to taxable years beginning after December 31, 1995.

DATES: These proposed regulations are withdrawn July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Wojay, of the Office of Assistant Chief Counsel, Financial Institutions and Products, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. Telephone (202) 622–3920, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws certain proposed regulations previously published in the **Federal Register** by the IRS. These proposed regulations, §§ 1.593–12, 1.593–13, and 1.593–14, are being withdrawn because under a subsequent amendment the underlying statute, section 593, does not apply to subsections (a), (b), (c), and (d) to taxable years beginning after December 31, 1995.

Drafting Information

The principal author of this withdrawal notice is Craig Wojay, Office of the Assistant Chief Counsel (Financial Institutions and Products) within the Office of the Chief Counsel, IRS. However, other personnel from the IRS and the Treasury Department participated in developing the withdrawal notice.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the proposed rulemaking that was published in the **Federal Register** on Monday, January 13, 1992 (57 FR 1232) is withdrawn.

Robert Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–17643 Filed 7–11–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT059–7218b, FRL–6731–5]

Approval and Promulgation of Implementation Plans; Connecticut; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In September 1999, the State of Connecticut (CT) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the CT's September 1999 SIP submittal including, CT's NO_X control regulation, section 22a–174–22b, ''Post–2002 Nitrogen Oxides (NO_X) Budget Program'' and CT's SIP narrative, ''Connecticut State Implementation Plan Revision to Implement the NO_X SIP Call,'' dated September 30, 1999. EPA is proposing to approve Connecticut's submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning , Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02114, and at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPA.GOV.

SUPPLEMENTARY INFORMATION:

Overview

On September 30, 1999, CT submitted a package of regulatory and narrative materials in order to comply with the NO_X SIP Call and strengthen its ozone SIP. EPA proposes full approval of CT's submittal.

The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION:

In the following questions and answers, the term ''you'' refers to the reader of the notice and ''we'' refers to the EPA.

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing approval of CT's SIP submittal, including CT's NO_X control regulation, section 22a–174–22b, ''Post-2002 Nitrogen Oxides (NO_X) Budget Program'' and the SIP narrative entitled, ''Connecticut State Implementation Plan Revision to Implement the NO_X SIP Call,'' dated September 30, 1999. CT submitted the adopted section 22a–174–22b and the SIP narrative with a request to revise the SIP on September 30, 1999. CT submitted the regulation and narrative in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call in each ozone season, i.e., May 1 to October 1, beginning in 2003. EPA finds that CT's submittal is fully approvable as a SIP strengthening measure for Connecticut's one-hour ground level ozone SIP and it meets the air quality objective of the NO_X SIP Call requirements that EPA has published to date. EPA will take action in a separate future rulemaking on whether Connecticut's submittal meets the applicable NO_X SIP Call requirements themselves.

B. Why Is EPA Proposing This Action?

EPA is proposing this action in order to:

- Fulfill CT's and EPA's requirements under the Clean Air Act (the Act);
- Make CT's control regulation federally-enforceable and available for credit in the SIP;
- Make CT's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the CT SIP; and
- Give you the opportunity to submit written comments on EPA's proposed actions, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the General NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999 ,[2] and implement control strategies by May 1, 2003.

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. But, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called ''NO_X Budget Trading Program for State Implementation Plans,'' (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR Part 96, sets forth a NO_X emissions trading program for large electric generating units (EGUs) and non-electric generating units (non-EGUs). A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the

[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On September 30, 1999, Connecticut voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because it is being proposed as a SIP-strengthening measure regardless of the status of the case.

participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.,* one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

E. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. Despite disagreeing with commenters' concerns, the NO_X SIP Call included these voluntary provisions to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.,* early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity or other industrial sectors and where early reductions are not available. See 40 CFR 51.121(e)(3).

F. What Guidance Did EPA Use To Evaluate Connecticut's submittal?

EPA evaluated CT's NO_X SIP Call submittal using EPA's ''NO_X SIP Call Checklist,'' (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122. The checklist outlines the criteria that the EPA Regional Office used to determine the completeness and approvability of CT's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's website at: http://www.epa.gov/ttn/otag/sip/related.html.

As described above, the final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR Part 96. EPA used the model rule to evaluate section 22a–174–22b. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking notice, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), to evaluate the approvability of CT's submittal. EPA also used § 110 of the CAA, Implementation Plans, to evaluate the approvability of CT's submittal as a revision to the SIP.

II. Connecticut's NO_X Budget Program

A. What is Connecticut's NO_X SIP Call Submittal?

Connecticut's September 30, 1999, SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, *i.e.,* section 22a–174–22b, ''Post-2002 Nitrogen Oxides NO_X Budget Program;''
- A description of how the state intends to use the compliance supplement pool, *i.e.,* as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, *i.e.,* as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, *i.e.,* as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, *i.e.,* as part of the SIP narrative.

As described above, in order to reduce NO_X emissions statewide from 2003 and beyond, CT adopted section 22a–174–22b. The regulation applies to all EGUs with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-EGU units that have a heat input capacity equal to or greater than 250 mmBtu per hour. Regarding other non-EGUs, CT has no cement kilns or internal combustion (IC) engines with emissions large enough to exceed the applicability threshold for assumed control requirements, *i.e.,* one ton per day. So, CT's SIP submittal does not assume any additional reductions from those sources. Furthermore, you should note that CT is not relying on any reductions beyond anticipated federal measures in the mobile and area sectors.

Below is a table of the 2007 baseline and budget emission levels that Connecticut has submitted with as part of its SIP narrative.

Source category	2007 Baseline NO_X emissions (tons/season)	2007 NO_X budget emissions (tons/season)	Projected reductions (tons/season)
EGUs	5,636	4,564	1,072
Non-EGU Point	5,124	4,970	154
Area Sources	4,821	4,821	0
Non-Road Mobile	10,736	10,736	0
Highway Mobile	19,902	19,902	0
CT Total	46,219	44,993	1,226

B. When Did Connecticut Propose and Adopt the Program?

On July 12, 1999, CT published a public notice to announce the availability of the proposed section 22a–174–22b, as well as the SIP narrative that included the statewide 2007 NO_X emission budget. The public notice opened a 30 day public comment period. A public hearing was held on the proposed regulation and SIP package on August 12, 1999. After modifying the proposal in response to public comment, on September 29, 1999, the final section 22a–174–22b was filed with the Secretary of State. The regulation became effective on that date.

C. When Did Connecticut Submit the SIP Revision to EPA and When Did EPA Find the Submittal Technically and Administratively Complete?

On September 30, 1999, CT DEP submitted section 22a–174–22b and the SIP narrative to EPA with a request to revise the CT SIP. On October 26, 1999, EPA sent a letter to CT deeming the SIP submittal technically and administratively complete.

D. What Is Connecticut's NO_X Budget Trading Program?

In response to the NO_X SIP Call, CT adopted section 22a–174–22b, ''Post-2002 Nitrogen Oxides NO_X Budget Program.'' With section 22a–174–22b, CT established a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. CT developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the kind of interstate NO_X allowance trading program described in § 51.121(b)(2).

Under section 22a–174–22b Connecticut allocates NO_X allowances to its EGUs and large industrial units. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can ever use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR Part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the federal Acid Rain program).

Section 22a–174–22b differs from EPA's NO_X model budget trading rule in two significant ways. Specifically, section 22a–174–22b is applicable to smaller electric generating sources than the model rule. Also, section 22a–174–22b uses a different method for allocating NO_X allowances. However, section 22a–174–22b results in fewer tons being allocated to sources than would be allowed by the model rule.

Considering the differences in allowance allocation methodology between section 22a–174–22b and 40 CFR Part 96, CT's regulation cannot be considered substantively identical to 40 CFR Part 96, as described in § 51.121(p). However, section 22a–174–22b does meet the requirements of § 51.121(f) through (o) and therefore, meets the requirements of § 51.121(b)(2) for interstate allowance trading programs. In this way, EPA finds that the program is similar enough to Part 96 for CT's sources to participate in the interstate NO_X allowance trading program administered by EPA. For additional information regarding EPA's evaluation of CT's NO_X SIP Call submittal, the reader should refer to the document entitled, ''Technical Support Document for Connecticut's NO_X SIP Call Submittal,'' dated May 4, 2000. Copies of the technical support document (TSD) can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

Section 22a–174–22b provides for the distribution of 473 early reductions to sources that implement NO_X reductions beyond applicable requirements after September 30, 1999 but before May 1, 2003. Under section 22a–174–22b, CT will only provide early reduction credits to those sources holding banked allowances that were allocated in 2000, 2001, and 2002, under CT's current NO_X budget program (*i.e.,* section 22a–174–22a). Section 22a–174–22a is CT's current SIP approved NO_X budget and allowance trading program that is part of the Ozone Transport Commission's regional NO_X cap and allowance trading program.

E. How Will Connecticut and EPA Enforce the Program?

Once approved into CT's SIP, both CT and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in section 22a–174–22b. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emissions monitoring or pollution control equipment requirements. CT and EPA will be able to enforce the source specific requirements of those permits.

In order to determine compliance with the emission requirements of the program, at the end of each ozone season, CT and EPA will compare sources' allowance and emission accounts in the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X emitted by that source and recorded in the Emissions Tracking System (ETS) for a particular ozone season (May 1 to October 1). For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. How Does Connecticut's Program Protect the Environment?

Based on air quality modeling assessments performed for the NO_X SIP Call, EPA believes that the NO_X reductions in CT and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Decreases of NO_X emissions will also help improve the environment in several important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

G. What Is the Result of EPA's Evaluation of Connecticut's SIP Submittal?

EPA has evaluated CT's September 30, 1999, SIP submittal and finds it fully approvable. The September 30, 1999 submittal will strengthen CT's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. The submittal also meets the air quality objectives of the NO_X SIP Call. EPA finds the NO_X control measures, section 22a–174–22b, as well as the SIP narrative that includes CT's 2007 NO_X baseline and controlled budgets, fully approvable. EPA finds that the submittal contained the information necessary to demonstrate that CT has the legal authority to implement and enforce the control measures, as well as a

description of how the state intends to use the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

Although section 22a–174–22b deviates from EPA's NO_X Budget Trading Model Rule, EPA finds that section 22a–174–22b is consistent with EPA's guidance and meets the air quality objectives of the NO_X SIP Call, including those found in 40 CFR part 51, 51.121 and 51.122, as well as the general SIP submittal requirements of the Act, § 110, 42 U.S.C. 7401 *et seq.* The most significant difference between the EPA's model rule and CT's control regulation is related to the timing of the allocations to the affected sources. Under CT's NO_X Budget Program, EPA will allocate NO_X allowances to a general state account by April 1 of the year that is three years before the relevant control period. CT will then hold the allowances in this account until allocating to sources, which it will do by May 1 of the relevant control period. While this deviates from the timing requirements stipulated under § 51.121(p) for streamlined approval, it is approvable under § 51.121(f) through § 51.121(o) as discussed below.

CT's SIP revision does not differ from EPA's model rule (40 CFR part 96) significantly enough to prevent CT from participating in the EPA administered trading program. CT's rule allows EPA to fulfill its obligation under § 96.41 (*i.e.*, the timing requirements for NO_X allowance allocations) to both the state and its sources, and allocate to the state by April 1 of the year that is three years in advance of the relevant control period. Once EPA allocates to CT's general account, it will become the state's responsibility to allocate the allowances to its sources.

EPA continues to believe that allocating to sources three years in advance allows sources to design the compliance strategy (*i.e.*, installing controls or buying, selling or banking allowances) that is most cost-effective for them. Decreasing sources' certainty about their future allocations and flexibility in meeting their obligations may impact their ability to comply with these requirements in the most cost-effective manner. Nevertheless, EPA believes CT's program will achieve the necessary reductions, albeit in a less cost-effective manner.

Regarding CT's SIP narrative, EPA finds that the submittal contains the required elements, including: the baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial, and 2007 state reporting requirements. EPA further finds that CT's 2007 projected inventory, reflecting the control strategies, is approvable, meeting the air quality objectives of the NO_X SIP Call.

In order to approve CT's 2007 projected inventory as meeting the air quality objectives of the NO_X SIP Call, however, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in Massachusetts (MA) and Rhode Island (RI) as well. Comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from the three states, you can see that the adopted measures in CT, MA, and RI will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required.

H. Why Is EPA Considering the NO_X SIP Call Submittals From CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (*i.e.,* ''the Three State MOU'') agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide CT with additional flexibility.

On September 15, 1999, EPA published a Notice of Proposed Rulemaking (NPR) to approve the redistribution of the three states' allocations as described in the MOU and modified by the EPA's May 1999 NO_X SIP Call technical corrections.[3] See 64 FR 50036. As described in the NPR, the sum of the 2007 budgets and supplement pool allocations for the three states after redistribution is identical to the sum of the three budgets and supplement pool allocations for the states as published in the May 1999 technical corrections **Federal Register** notice. In other words, the total NO_X reduction expected from the three states due to the SIP Call would be the same before and after the redistribution of budgets under the Three State MOU. In fact, both the May 1999 technical amendments and the September 1999 NPR required a NO_X reduction of 5,491 tons by the three states each ozone season from 2007 onward and provided a combined allocation of 961 tons from the compliance supplement pool.

On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). As can be seen in the tables below, the March 2, 2000 technical corrections primarily changed the highway mobile and non-EGU 2007 baselines and budgets for CT, MA, and RI. However, these changes largely cancel each other out, *e.g.,* the 2007 highway sub-inventory baselines and budgets increased by approximately the same amount in the three states. The March 2000 technical corrections, however, did not effect the amount of reduction expected from the EGU sector. The tables below compare the 2007 baselines and budgets for each sub-inventory sector for CT, MA, and RI as published in the May 1999 and March 2000 technical amendment **Federal Register** notices.

CT	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	5,636	5,636	0	2,652	2,652	0
Non-EGU	5,124	5,397	273	4,970	5,216	246
Area	4,821	4,821	0	4,821	4,821	0
Nonroad	10,736	10,736	0	10,736	10,736	0
Highway	19,902	19,424	−478	19,902	19,424	−478
Total	46,220	46,015	−205	43,081	42,849	−232

[3] You should note that EPA took comments on the Three State MOU NPR and intends to address those comments in a future rulemaking. Therefore, we are not seeking comments on the specifics of the Three State MOU NPR at this time.

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	16,479	16,479	0	15,145	15,146	1
Non-EGU	11,229	11,210	−19	10,296	10,298	2
Area	11,048	11,048	0	11,048	11,048	0
Nonroad	20,166	20,166	0	20,166	20,166	0
Highway	28,641	28,190	−451	28,641	28,190	−451
Total	87,563	87,092	−471	85,296	84,848	−448

RI	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	1,082	1,082	0	997	997	0
Non-EGU	2,031	1,635	−396	2,031	1,635	−396
Area	448	448	0	448	448	0
Nonroad	2,455	2,455	0	2,455	2,455	0
Highway	3,879	3,843	−36	3,879	3,843	−36
Total	9,895	9,463	−432	9,810	9,378	−432

The March 2000 **Federal Register** listed 2007 ozone season baseline emissions from CT, MA, and RI as 46,015 tons, 87,092 tons, and 9,463 tons, respectively. The March 2000 **Federal Register** listed the 2007 ozone season budgets for CT, MA, and RI as 42,849 tons, 84,848 tons, and 9,378 tons, and provided the three states with compliance supplement pools of 569 tons, 404 tons, and 15 tons, respectively, or a total of 988 tons. In total, the March 2000 notice required the three states to reduce their NO_X emissions by 5,495 tons per ozone season beginning in 2007.

In the Fall of 1999, CT, MA, and RI all adopted and submitted SIP packages in response to the NO_X SIP Call. All three states adopted and submitted NO_X control regulations that rely on reductions from the EGU and large non-EGU units to achieve their emission budgets. The 2007 baseline ozone season emissions adopted by the states were 46,219 tons, 87,563 tons, and 9,895 tons, respectively, or a three state total of 143,677 tons per ozone season. The SIP packages adopted and submitted by CT, MA, and RI, included 2007 projected NO_X inventories of 44,993 tons, 83,345 tons, and 9,798 tons, respectively, or a three state total of 138,136 tons per ozone season. Therefore, the total NO_X reduction expected from the adopted and submitted SIP packages from CT, MA, and RI is 5,541 tons per ozone season.

As discussed above, EPA signed the Three State MOU between CT, MA, and RI. We endorse the concept that states can voluntarily join together and redistribute their NO_X SIP Call budgets and compliance supplement pool allocations, provided that the total after the redistribution is less than or equal to before redistribution, and provided that the states have formalized such an agreement in an MOU or similar device to which EPA also agrees. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date. In separate **Federal Register** notices today, EPA is also proposing approval of MA's and RI's NO_X SIP Call submittals.

You can find the NO_X SIP Call 2007 baselines, budgets, and compliance supplement pool allocations from the March 2000 technical amendments and the state adopted SIPs summarized in the table below.

State	SIP Call 2007 baseline (tons NO_X per ozone season) as of 03/00	State adopted 2007 baseline (tons NO_X per ozone season)	SIP call 2007 budget as of 03/00 (tons NO_X per ozone season)	State adopted 2007 budget (tons NO_X per ozone season)	SIP Call Projected reduction (tons NO_X per ozone season) as of 03/00	State projected reduction (tons NO_X per ozone season)	Compliance supplement pool state allocations as of 03/00	State adopted compliance supplement pool
CT	46,015	46,219	42,849	44,993	3,166	1,226	569	473
MA	87,092	87,563	84,848	83,345	2,244	4,218	404	473
RI	9,463	9,895	9,378	9,798	85	97	15	15
Total	142,570	143,677	137,075	138,136	5,495	5,541	988	961

For additional information regarding EPA's evaluation of CT's NO_X SIP Call submittal, the reader should refer to the TSD available at either of the addresses listed in the **ADDRESSES** section of this notice.

I. What Other Significant Items Relate to Connecticut's Program?

In addition to submitting the September 30, 1999, SIP package in order to fulfill its NO_X SIP Call obligation, CT submitted section 22a–174–22b as part of its one-hour ozone attainment plans for the serious and severe ozone nonattainment areas of the state. Both attainment plans rely on the NO_X reductions associated with section 22a–174–22b in 2003 and beyond. EPA proposed approval of CT's attainment plans for both the serious and severe nonattainment areas on December 16,

1999. See 64 FR 70348. Approval and implementation of section 22a–174–22b strengthens CT's SIP and is necessary in order for CT to fulfill a requirement of the one-hour ozone attainment plans.

Section 22a–174–22b is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including CT, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of NO_X reductions by 1999 and another phase of reductions by 2003.

As a signatory state of the MOU, CT adopted its NO_X budget and allowance trading regulation, section 22a–174–22a, on December 15, 1998. Section 22a–174–22a contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as ''OTC Phase II.'' CT's phase II EGU budget is 5,866 tons per ozone season. EPA approved CT's phase II OTC NO_X budget regulation on September 28, 1999. See 64 FR 52238.

Section 22a-174–22b contains a new NO_X emissions budget and allowance trading program for the ozone seasons of 2003 and thereafter, the period known as ''OTC phase III.'' Although EPA's technical corrections and the Three State MOU described above would allow CT an EGU budget of 4,564 tons per season in 2003 and beyond, section 22a–174–22b contains an EGU ozone season budget of 4,477 tons. This is equal to the budget agreed upon by OTC for CT under phase III of the OTC program. Therefore, although the OTC MOU obligations are not federal requirements, section 22a-174–22b can be viewed as satisfying the OTC phase III program requirements as well.

J. What Issues Are Associated With Connecticut's NO_X SIP Call Submittal?

On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP call and remanding certain other portions to the Agency (*e.g.,* the definition of an EGU and the control assumptions for internal combustion engines). Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including CT. Those recalculated budgets are expected to be published in the next few months. However, this means that CT may be required to revisit its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, CT and other NO_X SIP Call subject states will be informed as to what, if any, changes are needed.

Additionally, as described above, the March 2, 2000 technical corrections changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI. Therefore, when those states make the changes needed due to the remanded portions of the NO_X SIP Call, those states will need to adopt changes to the highway and non-EGU 2007 baselines and budgets as well.

III. Proposed Action

EPA has reviewed CT's September 30, 1999, SIP submittal using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed CT's control measures and projected reductions and finds them approvable. Therefore, EPA is proposing to approve section 22a–174–22b and CT's NO_X SIP Call narrative at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

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

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

[FR Doc. 00–17186 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA076–7209b, FRL–6731–7]

Approval and Promulgation of Implementation Plans; Massachusetts; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In November 1999, the Commonwealth of Massachusetts (MA) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the MA's November 1999 SIP submittal including, MA's NO_X control regulation, 310 CMR 7.28, ''NO_X Allowance Trading Program,'' and the SIP narrative materials: ''Background Document and Technical Support For Public Hearings on the Proposed Revisions to the State Implementation Plan for Ozone,'' July 1999; ''Supplemental Background Document For Public Hearings on Modifications to the July, 1999 Proposal to Revise the State Implementation Plan For Ozone,'' September 1999; and ''Summary of Comments and Response To Comments From Public Hearings on Proposed Revisions to the State Implementation Plan for Ozone, Including Proposed 310 CMR 7.28.'' EPA is also proposing to approve changes to regulations 310 CMR 7.19, ''Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X),'' and 310 CMR 7.27, ''NO_X Allowance Program,'' related to emissions monitoring. EPA is proposing to approve Massachusetts' submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02114, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPA.GOV.

SUPPLEMENTARY INFORMATION:

Overview

On November 19, 1999, MA submitted a package of regulatory and narrative materials in order to comply with the NO_X SIP Call and strengthen its ozone SIP. EPA proposes full approval of MA's submittal.

The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION:

In the following questions and answers, the term ''you'' refers to the reader of the notice and ''we'' refers to the EPA.

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing approval of MA's SIP submittal, including MA's NO_X control regulation, 310 CMR 7.28, ''NO_X Allowance Trading Program'' and the SIP narrative materials listed above. EPA is also proposing to approve changes to regulations 310 CMR 7.19, ''Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X),'' and 310 CMR 7.27, ''NO_X Allowance Program,'' related to emissions monitoring.

MA submitted the adopted 310 CMR 7.28 and the SIP narrative, as well as the amendments to 310 CMR 7.19 and 310 CMR 7.27, with a request to revise the SIP on November 19, 1999. MA submitted the regulation and narrative in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call in each ozone season, *i.e.,* May 1 to October 1, beginning in 2003. EPA finds that MA's submittal is fully approvable as a SIP strengthening measure for Massachusetts' one-hour ground level ozone SIP and it meets the air quality objective of the NO_X SIP Call requirements that EPA has published to date. EPA will take action in a separate future rulemaking on whether Massachusetts's submittal meets the applicable NO_X SIP Call requirements themselves.

B. Why Is EPA Proposing This Action?

EPA is proposing this action in order to:

- Fulfill MA's and EPA's requirements under the Clean Air Act (the Act);
- Make MA's control regulation federally-enforceable and available for credit in the SIP;
- Make MA's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the MA SIP; and
- Give you the opportunity to submit written comments on EPA's proposed actions, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the General NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999 [2], and implement control strategies by May 1, 2003.

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. But, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called ''NO_X Budget Trading Program for State Implementation Plans,'' (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR Part 96, sets forth a NO_X emissions trading program for large electric generating units (EGUs) and non-electric generating units (non-EGUs). A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.,* one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

E. What is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. Despite disagreeing with commenters' concerns, EPA included these voluntary provisions in the NO_X SIP Call to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.,* early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity or other industrial sectors and where early reductions are not available. See 40 CFR 51.121(e)(3).

F. What Guidance Did EPA Use to Evaluate Massachusetts' Submittal?

EPA evaluated MA's NO_X SIP Call submittal using EPA's ''NO_X SIP Call

[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On November 19, 1999, Massachusetts voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because it is being proposed as a SIP-strengthening measure regardless of the status of the case.

Checklist,'' (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR § 51.121 and § 51.122. The checklist outlines the criteria that the EPA Regional Office used to determine the completeness and approvability of MA's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's website at: http://www.epa.gov/ttn/otag/sip/related.html.

As described above, the final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR Part 96. EPA used the model rule to evaluate 310 CMR 7.28. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking notice, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), to evaluate the approvability of MA's submittal. EPA also used § 110 of the CAA, Implementation Plans, to evaluate the approvability of MA's submittal as a revision to the SIP.

II. Massachusetts's NO_X Budget Program

A. What Is Massachusetts' NO_X SIP Call Submittal?

Massachusetts' September 30, 1999, SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, *i.e.,* 310 CMR 7.28;
- A description of how the state intends to use the compliance supplement pool, *i.e.,* as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, *i.e.,* as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, *i.e.,* as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, *i.e.*, as part of the SIP narrative.

As described above, in order to reduce NO_X emissions statewide from 2003 and beyond, MA adopted 310 CMR 7.28. The regulation applies to all EGUs with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-EGU units that have a heat input capacity equal to or greater than 250 mmBtu per hour. Regarding other non-EGUs, MA has no cement kilns or internal combustion (IC) engines with emissions large enough to exceed the applicability threshold for assumed control requirements, *i.e.,* one ton per day. So, MA's SIP submittal does not assume any additional reductions from those sources. Furthermore, you should note that MA is not relying on any reductions beyond anticipated federal measures in the mobile and area sectors.

Below is a table of the 2007 baseline and budget emission levels that Massachusetts has submitted with as part of its SIP narrative.

Source category	2007 Baseline NO_X emissions (tons/season)	2007 NO_X budget emissions (tons/season)	Projected reductions (tons/season)
EGUs	27,708	23,490	4,218
Non-EGU Point			
Area Sources	11,048	11,048	0
Non-Road Mobile	20,166	20,166	0
Highway Mobile	28,641	28,641	0
MA Total	87,563	83,345	4,218

B. When Did Massachusetts Propose and Adopt the Program?

In July and September 1999, MA published public notices to announce the availability of the proposed 310 CMR 7.28, proposed changes to 310 CMR 7.19 and 310 CMR 7.27, as well as the SIP narrative materials that included the statewide 2007 NO_X emission budget. The public notices started 30 day public comment periods. Public hearings were held on August 4, August 6, and October 28. The final 310 CMR 7.28, as well as the amendments to 310 CMR 7.19 and 310 CMR 7.27, were filed with the Secretary of State on November 15, 1999. The 310 CMR 7.28 and the changes to 310 CMR 7.19 and 310 CMR 7.27 became effective on December 10, 1999.

C. When Did Massachusetts Submit the SIP Revision to EPA and When Did EPA Find the Submittal Technically and Administratively Complete?

On November 19, 1999, MA DEP submitted 310 CMR 7.28 and the SIP narrative materials, as well as the amendments to 310 CMR 7.27 and 310 CMR 7.19, to EPA with a request to revise the MA SIP. Subsequently, on January 7, 2000, MA submitted copies of the regulations as promulgated in the Code of Massachusetts Regulations. On January 25, 2000, EPA sent a letter to MA deeming the SIP submittal technically and administratively complete.

D. What Is Massachusetts' NO_X Budget Trading Program?

In response to the NO_X SIP Call, MA adopted 310 CMR 7.28, ''Post-2002 Nitrogen Oxides NO_X Budget Program.'' With 310 CMR 7.28, MA established a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. MA developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the kind of interstate NO_X allowance trading program described in § 51.121(b)(2).

Under 310 CMR 7.28 Massachusetts allocates NO_X allowances to its EGUs and large industrial units. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can ever use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet

the requirements of 40 CFR Part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the federal Acid Rain program).

Generally, regulation 310 CMR 7.28 differs from EPA's model NO_X budget trading rule in three ways. First, 310 CMR 7.28 is applicable to smaller electric generating sources than the model rule. Second, the allocation method in 310 CMR 7.28 is based on useful output and results in fewer allocations (*i.e.*, lower NO_X emissions) than would be allowed by the model rule. Finally, MA's allowance trading rule does not provide the 25 ton per season exemption set forth in 40 CFR § 96.4(b). These differences make the regulation more stringent than 40 CFR Part 96 would be and are allowed under § 51.121(p). Therefore, 310 CMR 7.28 can be considered substantively identical to 40 CFR Part 96.

Regulation 310 CMR 7.28 provides for the distribution of 473 early reduction allowances to sources that implement NO_X reductions beyond applicable requirements after September 30, 1999, but before May 1, 2003. Under 310 CMR 7.28, MA will only provide early reduction credits to those sources holding banked allowances that were allocated in 2000, 2001, and 2002, under MA's current NO_X budget and allowance trading program (*i.e.*, regulation 310 CMR 7.27). Regulation 310 CMR 7.27 is MA's SIP approved NO_X budget and allowance trading program that is part of the Ozone Transport Commission's regional NO_X cap and allowance trading program that began in May 1999. See 64 FR 29567, June 2, 1999.

The amendments to 310 CMR 7.19 and 310 CMR 7.27 contain changes to MA's existing OTC MOU allowance trading program and NO_X RACT regulations. These minor changes were necessary to provide for a smooth transition to 310 CMR 7.28, and to ensure consistency between the regulatory requirements of 310 CMR 7.19, 310 CMR 7.27, 310 CMR 7.28, and 40 CFR Part 75.

For additional information regarding EPA's evaluation of MA's NO_X SIP Call submittal, the reader should refer to the document entitled, ''Technical Support Document for Massachusetts's NO_X SIP Call Submittal,'' dated May 4, 2000. Copies of the technical support document (TSD) can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

E. How Will Massachusetts and EPA Enforce the Program?

Once approved into MA's SIP, both MA and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in 310 CMR 7.28. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emissions monitoring or pollution control equipment requirements. MA and EPA will be able to enforce the source specific requirements of those permits, as well as the requirements of 310 CMR 7.28, 310 CMR 7.27, and 310 CMR 7.19.

Additionally, in order to determine compliance with the emission requirements of the program, at the end of each ozone season, MA and EPA will compare sources' allowance and emission accounts in the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X emitted by that source and recorded in the Emissions Tracking System (ETS) for a particular ozone season. For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. How Does Massachusetts' Program Protect the Environment?

Based on air quality modeling assessments performed for the NO_X SIP Call, EPA believes that the NO_X reductions in MA and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Decreases of NO_X emissions will also help improve the environment in several important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

G. What Is the Result of EPA's Evaluation of Massachusetts' SIP Submittal?

EPA has evaluated MA's November 19, 1999, SIP submittal and finds it fully approvable. The submittal will strengthen MA's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. The submittal also meets the air quality objectives of the NO_X SIP Call. EPA finds the NO_X control measures, 310 CMR 7.28, the SIP narrative that includes MA's 2007 NO_X baseline and controlled budgets, as well as the changes to 310 CMR 7.27 and 310 CMR 7.19, fully approvable. EPA finds that the submittal contained the information necessary to demonstrate that MA has the legal authority to implement and enforce the control measures, as well as a description of how the state intends to use the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

EPA finds that MA's control regulation and SIP narrative materials are consistent with EPA's guidance and meet the air quality objectives of the NO_X SIP Call, including, 40 CFR Part 51, § 51.121 and § 51.122 as well as the general SIP submittal requirements of the Act, § 110, 42 U.S.C. 7401 *et seq.* Regulation 310 CMR 7.28 does contain differences from the model rule, including: (1) 310 CMR 7.28 is applicable to smaller electric generating sources than the model rule; (2) the allocation method in 310 CMR 7.28 is based on useful output but results in fewer allocations (*i.e.*, lower NO_X emissions) than would be allowed by the model rule; and (3) the State's SIP trading rule does not provide the 25 ton/season exemption set forth in 40 CFR § 96.4(b). These differences are allowed under § 51.121(p). Therefore, EPA considers 310 CMR 7.28 to be substantively identical to 40 CFR Part 96.

Regarding MA's SIP narrative, EPA finds that the submittal contains the required elements, including: The baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial, and 2007 state reporting requirements. EPA further finds that MA's 2007 projected inventory, reflecting the control strategies, is approvable, reflecting the air quality objectives of the NO_X SIP Call.

In order to approve MA's 2007 projected inventory as meeting the air quality objectives of the NO_X SIP Call,

however, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in Connecticut (CT) and Rhode Island (RI) as well. Comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from the three states, you can see that the adopted measures in CT, MA, and RI will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required.

H. Why Is EPA Considering the NO_X SIP Call Submittals From CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (*i.e.*, ''the Three State MOU'') agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide CT with additional flexibility.

On September 15, 1999, EPA published a Notice of Proposed Rulemaking (NPR) to approve the redistribution of the three states' allocations as described in the MOU and modified by the EPA's May 1999 NO_X SIP Call technical corrections.[3] See 64 FR 50036. As described in the NPR, the sum of the 2007 budgets and supplement pool allocations for the three states after redistribution is identical to the sum of the three budgets and supplement pool allocations for the states as published in the May 1999 technical corrections **Federal Register** notice. In other words, the total NO_X reduction expected from the three states due to the SIP Call would be the same before and after the redistribution of budgets under the Three State MOU. In fact, both the May 1999 technical amendments and the September 1999 NPR required a NO_X reduction of 5,491 tons by the three states each ozone season from 2007 onward and provided a combined allocation of 961 tons from the compliance supplement pool.

On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). As can be seen in the tables below, the March 2, 2000 technical corrections primarily changed the highway mobile and non-EGU 2007 baselines and budgets for CT, MA, and RI. However, these changes largely cancel each other out, *e.g.*, the 2007 highway sub-inventory baselines and budgets increased by the same amounts. The March 2000 technical corrections, however, did not effect the amount of reduction expected from the EGU sector. The tables below compare the 2007 baselines and budgets for each sub-inventory sector for CT, MA, and RI as published in the May 1999 and March 2000 technical amendment **Federal Register** notices.

CT	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	5,636	5,636	0	2,652	2,652	0
Non-EGU	5,124	5,397	273	4,970	5,216	246
Area	4,821	4,821	0	4,821	4,821	0
Nonroad	10,736	10,736	0	10,736	10,736	0
Highway	19,902	19,424	–478	19,902	19,424	–478
Total	46,220	46,015	–205	43,081	42,849	–232

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	16,479	16,479	0	15,145	15,146	1
Non-EGU	11,229	11,210	–19	10,296	10,298	2
Area	11,048	11,048	0	11,048	11,048	0
Nonroad	20,166	20,166	0	20,166	20,166	0
Highway	28,641	28,190	–451	28,641	28,190	–451
Total	87,563	87,092	–471	85,296	84,848	–448

RI	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	1,082	1,082	0	997	997	0
Non-EGU	2,031	1,635	−396	2,031	1,635	−396
Area	448	448	0	448	448	0
Nonroad	2,455	2,455	0	2,455	2,455	0
Highway	3,879	3,843	−36	3,879	3,843	−36
Total	9,895	9,463	–432	9,810	9,378	−432

The March 2000 **Federal Register** listed 2007 ozone season baseline emissions from CT, MA, and RI as 46,015 tons, 87,092 tons, and 9,463 tons, respectively. The March 2000 **Federal Register** listed the 2007 ozone season budgets for CT, MA, and RI as 42,849 tons, 84,848 tons, and 9,378 tons, and provided the three states with compliance supplement pools of 569 tons, 404 tons, and 15 tons, respectively, or a total of 988 tons. In total, the March 2000 notice required the three states to reduce their NO_X emissions by 5,495 tons per ozone season beginning in 2007.

In the Fall of 1999, CT, MA, and RI all adopted and submitted SIP packages in response to the NO_X SIP Call. All three states adopted and submitted NO_X control regulations that rely on reductions from the EGU and large non-EGU units to achieve their emission budgets. The 2007 baseline ozone

[3] You should note that EPA took comments on the Three State MOU NPR and intends to address those comments in a future rulemaking. Therefore, we are not seeking comments on the specifics of the Three State MOU NPR at this time.

season emissions adopted by the states were 46,219 tons, 87,563 tons, and 9,895 tons, respectively, or a three state total of 143,677 tons per ozone season. The SIP packages adopted and submitted by CT, MA, and RI, included 2007 projected NO_X inventories of 44,993 tons, 83,345 tons, and 9,798 tons, respectively, or a three state total of 138,136 tons per ozone season. Therefore, the total NO_X reduction expected from the adopted and submitted SIP packages from CT, MA, and RI is 5,541 tons per ozone season.

As discussed above, EPA signed the Three State MOU between CT, MA, and RI. We endorse the concept that states can voluntarily join together and redistribute their NO_X SIP Call budgets and compliance supplement pool allocations, provided that the total after the redistribution is less than or equal to before redistribution, and provided that the states have formalized such an agreement in an MOU or similar device to which EPA also agrees. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date. In separate **Federal Register** notices today, EPA is also proposing approval of CT's and RI's NO_X SIP Call submittals.

You can find the NO_X SIP Call 2007 baselines, budgets, and compliance supplement pool allocations from the March 2000 technical amendments and the state adopted SIPs summarized in the table below.

State	SIP Call 2007 Baseline (tons NO_X per ozone season) as of 03/00	State adopted 2007 baseline (tons NO_X per ozone season)	SIP Call 2007 Budget as of 03/00 (tons NO_X per ozone season)	State adopted 2007 budget (tons NO_X per ozone season)	SIP Call Projected reduction (tons NO_X per ozone season) as of 03/00	State Projected Reduction (tons NO_X per ozone season)	Compliance Supplement Pool State Allocations as of 03/00	State Adopted Compliance Supplement Pool
CT	46,015	46,219	42,849	44,993	13,166	1,226	569	473
MA	87,092	87,563	84,848	83,345	2,244	4,218	404	473
RI	9,463	9,895	9,378	9,798	85	97	15	15
Total	142,570	143,677	137,075	138,136	5,495	5,541	988	961

For additional information regarding EPA's evaluation of MA's NO_X SIP Call submittal, the reader should refer to the TSD available at either of the addresses listed in the **ADDRESSES** section of this notice.

I. What Other Significant Items Relate to Massachusetts' Program?

In addition to fulfilling the NO_X SIP Call obligation, 310 CMR 7.28 was adopted as part of MA's one hour ozone attainment plan for the serious ozone nonattainment area in Western MA. The attainment plan relies on the NO_X reductions associated with 310 CMR 7.28 in 2003 and beyond. EPA proposed conditional approval of MA's attainment plans for both the serious and severe nonattainment areas on December 16, 1999. See 64 FR 70318. Therefore, the approval and implementation of 310 CMR 7.28 is also necessary in order for MA to fulfill a requirement of its one hour ozone attainment plan.

Regulation 310 CMR 7.28 is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including MA, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of NO_X reductions by 1999 and another phase of reductions by 2003.

As a signatory state of the MOU, MA adopted its NO_X budget and allowance trading regulation, 310 CMR 7.27, on June 5, 1997. Regulation 310 CMR 7.27 contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as ''OTC Phase II.'' MA's phase II budget is 18,146 tons per ozone season. EPA approved MA's phase II OTC NO_X budget regulation on June 2, 1999. See 64 FR 29567.

Regulation 310 CMR 7.28 contains a new NO_X emissions budget and allowance trading program for the ozone seasons of 2003 and thereafter, the period known as ''OTC phase III.'' Although EPA's technical corrections and the Three State MOU described above would allow MA an EGU budget of 13,245 tons per season in 2003 and beyond, 310 CMR 7.28 contains an ozone season EGU (and affected non-EGU) budget of 12,861 tons. This is equal to the budget agreed upon by OTC for affected sources in MA under phase III of the OTC program. Therefore, although the OTC MOU obligations are not federal requirements, 310 CMR 7.28 can be seen as satisfying the OTC phase III program requirements as well.

J. What Issues Are Associated With Massachusetts' NO_X SIP Call Submittal?

On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP Call and remanding certain other portions to the Agency (*e.g.,* the definition of an EGU and the control assumptions for internal combustion engines). Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including MA. Those recalculated budgets are expected to be published in the next few months. However, this means that MA may be required to revisit its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, MA and other NO_X SIP Call subject states will be informed as to what, if any, changes are needed.

Additionally, as described above, the March 2, 2000 technical corrections changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI. Therefore, when those states make the changes needed due to the remanded portions of the NO_X SIP Call, they will need to adopt changes to the highway and non-EGU 2007 baselines and budgets as well.

III. Proposed Action

EPA has reviewed MA's November 19, 1999, SIP submittal using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed MA's

control measures and projected reductions and finds them approvable. Therefore, EPA is proposing to approve 310 CMR 7.28 and MA's NO_X SIP Call narrative into the MA SIP at this time.

MA's November 19, 1999, submittal also contained amendments to 310 CMR 7.19 and 310 CMR 7.27. These amendments consisted of minor changes to the regulations to ensure consistent requirements and a smooth transition to the program under 310 CMR 7.28 in 2003. EPA has reviewed the amendments and is proposing to approve them into the MA SIP at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

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

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

[FR Doc. 00–17187 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI041–6989b, FRL–6731–6]

Approval and Promulgation of Implementation Plans; Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In October 1999, the State of Rhode Island (RI) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the RI's October 1999 SIP submittal including, RI's NO_X control regulation, Regulation No. 41, ''Nitrogen Oxides Allowance Program,'' and the SIP narrative materials, ''NO_X State Implementation Plan (SIP) Call Narrative,'' that includes a statewide emissions budget for the ozone season, i.e., May 1 to October 1, of 2007 and each year after. EPA is proposing to approve Rhode Island's submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, 02114, and at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPA.GOV.

SUPPLEMENTARY INFORMATION:

Overview

On October 1, 1999, RI submitted a package of regulatory and narrative materials in order to comply with the NO_X SIP Call and strengthen its ozone SIP. EPA proposes full approval of RI's submittal.

The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION:

In the following questions and answers, the term ''you'' refers to the reader of the notice and ''we'' refers to the EPA.

I. EPA's Action

A. What Action is EPA Proposing Today?

EPA is proposing approval of RI's SIP submittal, including RI's NO_X control regulation, Regulation No. 41, ''Nitrogen Oxides Allowance Trading Program,'' and the SIP narrative entitled, ''NO_X State Implementation Plan (SIP) Call Narrative.''

RI submitted the adopted Regulation No. 41 and the SIP narrative with a request to revise the SIP on October 1, 1999. RI submitted the regulation and narrative in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call in each ozone season, i.e., May 1 to October 1, beginning in 2003. EPA finds that RI's submittal is fully approvable as a SIP strengthening measure for Rhode Island's one-hour ground level ozone SIP and it meets the air quality objective of the NO_X SIP Call requirements that EPA has published to date. EPA will take action in a separate future rulemaking on whether Rhode Island's submittal meets the applicable NO_X SIP Call requirements themselves.

B. Why is EPA Proposing this Action?

EPA is proposing this action in order to:

- Fulfill RI's and EPA's requirements under the Clean Air Act (the Act);
- Make RI's control regulation federally-enforceable and available for credit in the SIP;
- Make RI's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the RI SIP; and
- Give you the opportunity to submit written comments on EPA's proposed actions, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the General NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999 [2], and implement control strategies by May 1, 2003.

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. But, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called ''NO_X Budget Trading Program for State Implementation Plans,'' (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR Part 96, sets forth a NO_X emissions trading program for large electric generating units (EGUs) and non-electric generating units (non-EGUs). A state can voluntarily choose to adopt EPA's model rule in order to allow sources

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[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On October 1, 1999, Rhode Island voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because it is being proposed as a SIP-strengthening measure regardless of the status of the case.

within its borders to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

E. What is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. Despite disagreeing with commenters' concerns, EPA included these voluntary provisions in the NO_X SIP Call to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.*, early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity or other industrial sectors and where early reductions are not available. See 40 CFR 51.121(e)(3).

F. What Guidance Did EPA Use to Evaluate Rhode Island's Submittal?

EPA evaluated RI's NO_X SIP Call submittal using EPA's ''NO_X SIP Call Checklist,'' (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122. The checklist outlines the criteria that the EPA Regional Office used to determine the completeness and approvability of RI's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's website at: http://www.epa.gov/ttn/otag/sip/related.html.

As described above, the final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR Part 96. EPA used the model rule to evaluate Regulation No. 41. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking notice, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), to evaluate the approvability of RI's submittal. EPA also used § 110 of the CAA, Implementation Plans, to evaluate the approvability of RI's submittal as a revision to the SIP.

II. Rhode Island's NO_X Budget Program

A. What is Rhode Island's NO_X SIP Call Submittal?

Rhode Island's October 1, 1999, SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, *i.e.*, Regulation No. 41;
- A description of how the state intends to use the compliance supplement pool, *i.e.*, as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, *i.e.*, as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, *i.e.*, as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, *i.e.*, as part of the SIP narrative.

As described above, in order to reduce NO_X emissions statewide from 2003 and beyond, RI adopted Regulation No. 41. The regulation applies to all EGUs with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-EGU units that have a heat input capacity equal to or greater than 250 mmBtu per hour. Regarding other non-EGUs, RI has no cement kilns or internal combustion (IC) engines with emissions large enough to exceed the applicability threshold for assumed control requirements, *i.e.*, one ton per day. So, RI's SIP submittal does not assume any additional reductions from those sources. Furthermore, you should note that RI is not relying on any reductions beyond anticipated federal measures in the mobile and area sectors.

Below is a table of the 2007 baseline and budget emission levels that Rhode Island has submitted with as part of its SIP narrative.

Source category	2007 baseline NO_X emissions (tons/season)	2007 NO_X budget emissions (tons/season)	Projected deductions (tons/season)
EGUs	1,082	985	97
Non-EGU Point	2,031	2,031	0
Area Sources	448	448	0
Non-Road Mobile	2,455	2,455	0
Highway Mobile	3,879	3,879	0
RI Total	9,895	9,798	97

B. When Did Rhode Island Propose and Adopt the Program?

On July 19, 1999, Rhode Island proposed a draft of Regulation No. 41 and the SIP narrative. The release of the proposal began a 30 day public comment period. On August 17, 1998, EPA provided written comments to the public record. On August 20, 1999, a public hearing was held on Regulation No. 41 and the SIP narrative. On October 1, 1999, the final Regulation No. 41 was filed with the Secretary of State. The regulation became effective on that date.

C. When Did Rhode Island Submit the SIPr Revision to EPA and When did EPA Find the Submittal Technically and Administratively Complete?

On October 1, 1999, RI DEM submitted Regulation No. 41 and the SIP narrative to EPA with a request to revise the RI SIP. On October 26, 1999, EPA sent a letter to RI deeming the SIP submittal technically and administratively complete.

D. What Is Rhode Island's NO_X Budget Trading Program?

In response to the NO_X SIP Call, RI adopted Regulation No. 41, ''Nitrogen Oxides Allowance Program.'' With Regulation No. 41, RI is establishing a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. RI developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the interstate NO_X allowance trading program described in § 51.121(b)(2).

Under Regulation No. 41, RI allocates NO_X allowances to its EGUs. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR Part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the federal Acid Rain program).

Generally, Regulation No. 41 differs from EPA's model NO_X budget trading rule in three ways. First, Regulation No. 41 is applicable to smaller electric generating sources than the model rule. Second, Regulation No. 41 does not allow early reduction credits and does not allocate any allowances from the compliance supplement pool. Finally, Regulation No. 41 describes a different methodology for allocating allowances from that set forth in the model rule but still ensures that the total allowance allocation does not exceed the state program budget. These differences make the regulation more stringent than 40 CFR Part 96 would be and are allowed under § 51.121(p). Therefore, Regulation No. 41 can be considered substantively identical to 40 CFR Part 96.

The NO_X SIP Call allotted RI with a compliance supplement pool. However, Regulation No. 41 does not provide for the distribution of early reductions. All of the sources affected are well controlled, gas-fired EGUs, with emission rates below the assumed 0.15 lb. NO_X/mmBtu assumed in the development of the state budgets. This means that no EGU sources in RI will have to reduce their emissions from current permitted levels in order to comply with the projected 2007 budget. Therefore, RI decided not to include provisions for distributing allowances from the compliance supplement pool.

For additional information regarding RI's NO_X SIP Call submittal, the reader should refer to the document entitled, ''Technical Support Document for Rhode Island's NO_X SIP Call Submittal,'' dated May 5, 2000. Copies of the technical support document (TSD) can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

E. How Will Rhode Island and EPA Enforce the Program?

Once approved into RI's SIP, both RI and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in Regulation No. 41. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emissions monitoring or pollution control equipment requirements. RI and EPA will be able to enforce the source specific requirements of those permits, as well as the requirements of Regulation No. 41.

Additionally, in order to determine compliance with the emission requirements of the program, at the end of each ozone season, RI and EPA will compare sources' allowance and emission accounts in the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X emitted by that source and recorded in the Emissions Tracking System (ETS) for a particular ozone season. For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. How Does Rhode Island's Program Protect the Environment?

Based on air quality modeling assessments performed for the NO_X SIP Call, EPA believes that the NO_X reductions in RI and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Decreases of NO_X emissions will also help improve the environment in several important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water,

excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

G. What is the Result of EPA's Evaluation of Rhode Island's SIP Submittal?

EPA has evaluated RI's October 1, 1999, SIP submittal and finds it fully approvable. The submittal will strengthen RI's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. EPA also finds that the submittal meets the air quality objectives of the NO_X SIP Call. EPA finds the NO_X control measures, Regulation No. 41, the SIP narrative that includes RI's 2007 NO_X baseline and controlled budgets fully approvable. EPA finds that the submittal contained the information necessary to demonstrate that RI has the legal authority to implement and enforce the control measures, as well as a description of how the state intends to use the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

EPA finds that RI's control regulation and SIP narrative materials are consistent with EPA's guidance and meet the air quality objectives of the NO_X SIP Call, including, 40 CFR Part 51, § 51.121 and § 51.122 as well as the general SIP submittal requirements of the Act, § 110, 42 U.S.C. 7401 *et seq.* Regulation No. 41 does contain differences from the model rule but such differences are allowed under § 51.121(p). Therefore, EPA considers Regulation No. 41 to be substantively identical to 40 CFR Part 96.

Regarding RI's SIP narrative, EPA finds that the submittal contains the required elements, including: the baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial, and 2007 state reporting requirements. EPA further finds that RI's 2007 projected inventory, reflecting the control strategies, is approvable, reflecting the air quality objectives of the NO_X SIP Call.

In order to approve RI's 2007 projected inventory as meeting the air quality objectives of the NO_X SIP Call, however, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in Connecticut (CT) and Massachusetts (MA) as well. Comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from the three states, you can see that the adopted measures in CT, MA, and RI will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required.

H. Why is EPA Considering the NO_X SIP Call Submittals from CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (*i.e.*, ''the Three State MOU'') agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide CT with additional flexibility.

On September 15, 1999, EPA published a Notice of Proposed Rulemaking (NPR) to approve the redistribution of the three states' allocations as described in the MOU and modified by the EPA's May 1999 NO_X SIP Call technical corrections.[3] See 64 FR 50036. As described in the NPR, the sum of the 2007 budgets and supplement pool allocations for the three states after redistribution is identical to the sum of the three budgets and supplement pool allocations for the states as published in the May 1999 technical corrections **Federal Register** notice. In other words, the total NO_X reduction expected from the three states due to the SIP Call would be the same before and after the redistribution of budgets under the Three State MOU. In fact, both the May 1999 technical amendments and the September 1999 NPR required a NO_X reduction of 5,491 tons by the three states each ozone season from 2007 onward and provided a combined allocation of 961 tons from the compliance supplement pool.

On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). As can be seen in the tables below, the March 2, 2000 technical corrections primarily changed the highway mobile and non-EGU 2007 baselines and budgets for CT, MA, and RI. However, these changes largely cancel each other out, *e.g.*, the 2007 highway sub-inventory baselines and budgets increased by the same amounts. The March 2000 technical corrections, however, did not effect the amount of reduction expected from the EGU sector. The tables below compare the 2007 baselines and budgets for each sub-inventory sector for CT, MA, and RI as published in the May 1999 and March 2000 technical amendment **Federal Register** notices.

CT	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	5,636	5,636	0	2,652	2,652	0
Non-EGU	5,124	5,397	273	4,970	5,216	246
Area	4,821	4,821	0	4,821	4,821	0
Nonroad	10,736	10,736	0	10,736	10,736	0
Highway	19,902	19,424	−478	19,902	19,424	−478
Total	46,220	46,015	−205	43,081	42,849	−232

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	16,479	16,479	0	15,145	15,146	1

[3] You should note that EPA took comments on the Three State MOU NPR and intends to address those comments in a future rulemaking. Therefore, we are not seeking comments on the specifics of the Three State MOU NPR at this time.

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
Non-EGU	11,229	11,210	−19	10,296	10,298	2
Area	12,048	11,048	0	11,048	11,048	0
Nonroad	20,166	20,166	0	20,166	20,166	0
Highway	28,641	28,190	−451	28,641	28,190	−451
Total	87,563	87,092	−471	85,296	84,848	−448

RI	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	1,082	1,082	0	997	997	0
Non-EGU	2,031	1,635	−396	2,031	1,635	−396
Area	448	448	0	448	448	0
Nonroad	2,455	2,455	0	2,455	2,455	0
Highway	3,879	3,843	−36	3,879	3,843	−36
Total	9,895	9,463	−432	9,810	9,378	−432

The March 2000 **Federal Register** listed 2007 ozone season baseline emissions from CT, MA, and RI as 46,015 tons, 87,092 tons, and 9,463 tons, respectively. The March 2000 **Federal Register** listed the 2007 ozone season budgets for CT, MA, and RI as 42,849 tons, 84,848 tons, and 9,378 tons, and provided the three states with compliance supplement pools of 569 tons, 404 tons, and 15 tons, respectively, or a total of 988 tons. In total, the March 2000 notice required the three states to reduce their NO_X emissions by 5,495 tons per ozone season beginning in 2007.

In the Fall of 1999, CT, MA, and RI all adopted and submitted SIP packages in response to the NO_X SIP Call. All three states adopted and submitted NO_X control regulations that rely on reductions from the EGU and large non-EGU units to achieve their emission budgets. The 2007 baseline ozone season emissions adopted by the states were 46,219 tons, 87,563 tons, and 9,895 tons, respectively, or a three state total of 143,677 tons per ozone season. The SIP packages adopted and submitted by CT, MA, and RI, included 2007 projected NO_X inventories of 44,993 tons, 83,345 tons, and 9,798 tons, respectively, or a three state total of 138,136 tons per ozone season. Therefore, the total NO_X reduction expected from the adopted and submitted SIP packages from CT, MA, and RI is 5,541 tons per ozone season.

As discussed above, EPA signed the Three State MOU between CT, MA, and RI. We endorse the concept that states can voluntarily join together and redistribute their NO_X SIP Call budgets and compliance supplement pool allocations, provided that the total after the redistribution is less than or equal to before redistribution, and provided that the states have formalized such an agreement in an MOU or similar device to which EPA also agrees. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date. In separate **Federal Register** notices today, EPA is also proposing approval of CT's and MA's NO_X SIP Call submittals.

You can find the NO_X SIP Call 2007 baselines, budgets, and compliance supplement pool allocations from the March 2000 technical amendments and the state adopted SIPs summarized in the table below.

State	SIP call 2007 baseline (tons NO_X per ozone season) as of 03/00	State adopted 2007 baseline (tons NO_X per ozone season)	SIP call 2007 budget as of 03/00 (tons NO_X per ozone season)	State adopted 2007 budget (tons NO_X per ozone season)	SIP call projected reduction (tons NO_X per ozone season) as of 03/00	State projected reduction (tons NO_X per ozone season)	Compliance supplement pool state allocations as of 03/00	State adopted compliance supplement pool
CT	46,015	46,219	42,849	44,993	3,166	1,226	569	473
MA	87,092	87,563	84,848	83,345	2,244	4,218	404	473
RI	9,463	9,895	9,378	9,798	85	97	15	15
Total	142,570	143,677	137,075	138,136	5,495	5,541	988	961

For additional information regarding EPA's evaluation of RI's NO_X SIP Call submittal, the reader should refer to the TSD available at either of the addresses listed in the **ADDRESSES** section of this notice.

I. What Other Significant Items Relate to Rhode Island's Program?

Regulation No. 41 is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including RI, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of NO_X reductions by 1999

and another phase of reductions by 2003.

As a signatory state of the MOU, RI adopted its NO_X budget and allowance trading regulation, Regulation No. 38, on June 10, 1997. Regulation No. 38 contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as ''OTC Phase II.'' RI's phase II budget is 626 tons per ozone season. EPA approved RI's phase II OTC NO_X budget regulation on June 2, 1999. See 64 FR 29567. Regulation No. 41 contains a new NO_X emissions budget and allowance trading program for the ozone seasons of 2003 and thereafter, in order to control NO_X emissions during the period described in the OTC program as ''OTC phase III.''

J. What Issues Are Associated With Rhode Island's NO_X SIP Call Submittal?

On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP Call and remanding certain other portions to the Agency (*e.g.*, the definition of an EGU and the control assumptions for internal combustion engines). Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including RI. Those recalculated budgets are expected to be published in the next few months. However, this means that RI may be required to revisit its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, RI and other NO_X SIP Call subject states will be informed as to what, if any, changes are needed.

Additionally, as described above, the March 2, 2000 technical corrections changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI. Therefore, when those states make the changes needed due to the remanded portions of the NO_X SIP Call, they will need to adopt changes to the highway and non-EGU 2007 baselines and budgets as well.

III. Proposed Action

EPA has reviewed RI's October 1, 1999, SIP submittal using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed RI's control measures and projected reductions and finds them approvable. Therefore, EPA is proposing to approve Regulation No. 41 and RI's NO_X SIP Call narrative into the RI SIP at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

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

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

[FR Doc. 00–17188 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN65–01–7290b; FRL–6712–8]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action approves a State Implementation Plan (SIP) revision for the State of Minnesota which was

submitted on December 7, 1999. This SIP revision is to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rules based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received by August 11, 2000.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulations Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final document which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–17348 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6732–2]

RIN 2060–AI89

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes an adjustment to the VOC performance standard under Phase II of the reformulated federal gasoline (RFG) program for ethanol RFG blends that contain 3.5 weight percent oxygen. For such blends, the proposed adjustment would reduce by 1 percentage point (from a 27.4 to a 26.4 percent reduction in the north, and from a 29 to a 28 percent reduction in the south) the VOC performance standard. We believe that air quality benefits will continue to be similar to the current RFG standards. EPA also solicits comment on adjustment or elimination of the minimum oxygen requirement of 1.5 weight percent.

This action implements the National Research Council (NRC) recommendation that the contribution of CO to ozone formation be recognized in assessments of RFG air quality benefits.

This action also implements recommendations of the Blue Ribbon Panel on Oxygenate Use. One of the panel's recommendations was that EPA take steps to reduce the amount of MTBE used in gasoline. The action proposed today would increase the flexibility available to refiners to formulate RFG without MTBE while still realizing ozone benefits that are similar to those of the current Phase II program.

DATES: All public comments must be received on or before September 11, 2000.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed below and to Barry Garelick (6406J), Environmental Protection Specialist, U.S. Environmental Protection Agency, Office of Transportation and Air Quality, Transportation and Regional Programs, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Materials relevant to this have been placed in docket [A–99–32] located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW., Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services. To request a public hearing, contact Barry Garelick, (202) 564–9028.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Barry Garelick, Environmental Protection Specialist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9028. To notify EPA of a public hearing request, contact Barry Garelick, (202) 564–9028.

SUPPLEMENTARY INFORMATION: The remainder of this proposed rule is organized as follows:

I. Statutory Authority

I. Adjusted VOC Standard Under Phase II of the RFG Program

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
SIC 2911	Refiners, importers, oxygenate producers, and oxygenate blenders of reformulated gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.41 dealing specifically with the RFG standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

The purpose of the RFG program is to improve air quality in certain specified areas of the country by requiring reductions in emissions of ozone forming volatile organic compounds (VOCs) and emissions of toxic air pollutants through the reformulation of gasoline, pursuant to 211(k) of the Clean Air Act (CAA or the Act), as amended. Section 211(k)(10)(D) of the Act mandates that RFG be sold in the nine largest metropolitan areas with the most severe summertime ozone levels, as well as areas that are reclassified to ''Severe''. When the Sacramento Metropolitan Air Quality Management District was reclassified to ''Severe'', the number of mandated areas became 10. There will soon be 11 areas since the San Joaquin Valley area of California will be reclassified to ''Severe''. In addition to the mandatory areas, RFG must also be sold in ozone nonattainment areas that opt into the program.[1] The Act also mandates certain requirements for the RFG program. Section 211(k)(1) directs EPA to issue regulations that:

> require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

Section 211(k)(2) includes compositional specifications for reformulated gasoline including a 2.0 weight percent oxygen minimum, a 1.0 volume percent benzene maximum, and a prohibition on heavy metal content. This section also requires emissions from RFG to contain no more oxides of nitrogen (NO_X) than baseline gasoline emissions. Baseline emissions are the emissions of 1990 model year vehicles operated on a specified baseline gasoline.

Section 211(k)(3) requires RFG to meet the more stringent of either a formula or VOC and toxic air pollutant performance standards. During the initial RFG rulemaking process EPA found the performance standards to be more stringent. The performance standards at 40 CFR 80.41 require specific minimum reductions in emissions of VOC and toxics. For 1995 through 1999, or Phase I of the RFG program, EPA's regulations must require VOC emission and toxic air emission reductions from RFG measured on a mass basis, at least equal to 15 percent of baseline emissions. For the year 2000 and beyond, or Phase II of the RFG program, EPA's regulations must include a VOC and toxics performance standard each of which must be at least equal to a 25 percent reduction from baseline emissions. For the year 2000 and beyond EPA can adjust the performance standard upward or downward taking into account such factors as technical feasibility and cost, but in no case can the reduction be less than 20 percent. EPA also retains the authority in section 211(k)(1) to require greater reductions than these Phase I and II minimums.

Shortly after passage of the CAA Amendments in 1990, EPA entered into a regulatory negotiation with interested parties to develop specific proposals for implementing the RFG program. In August 1991, the negotiating committee recommended a program outline that would form the basis for a notice of proposed rulemaking, addressing emission content standards for Phase I (1995–1999), emission models, certification, enforcement, and other important program elements.

EPA published final regulations on February 16, 1994. The final rule closely followed the consensus outline agreed to by various parties in the negotiated rulemaking process. The final rule also adopted a NO_X emission reduction performance standard for Phase II RFG, relying on authority under section 211(c)(1)(A).

The regulations provide a method of certification through the complex model, based on fuel characteristics such as oxygen, benzene, aromatics, RVP, sulfur, olefins and the percent of fuel evaporated at 200 and 300 degrees Fahrenheit (E200 and E300, respectively).

Phase II will lead to significant reductions in the emission of the ozone precursors VOC and NO_X, and the emission of toxic air pollutants. The VOC Phase II performance standard is 29 percent for southern (class B) areas and 27.4 percent for northern (class C) areas, representing approximately an additional 10 percent reduction in VOC emissions beyond the Phase I requirements. The Phase II NO_X reduction requirement is 6.8 percent, and the toxics reduction requirement is 22 percent.

C. Need for Action

1. Concerns Relating to Use of MTBE

In the Clean Air Act, Congress specified that RFG contain two percent by weight oxygen. MTBE and ethanol are the two forms of chemical oxygen (or oxygenates) that gasoline producers most commonly use to add oxygen to their gasoline. Refiners and importers decide which oxygenate to use to meet the CAA requirement. MTBE and ethanol have also been used in conventional gasoline, as octane enhancers, since the 1970s.

Many chemicals in gasoline, including MTBE, can end up in groundwater, as a result of releases from storage tanks and other sources. MTBE is highly soluble and travels faster and farther in water than other gasoline components. MTBE has a strong taste and odor, so even small amounts of MTBE in water can make a water supply undrinkable, and significantly impact an area's ability to fully utilize its water resources. At higher levels, MTBE may also pose a risk to human health.

[1] *Mandatory areas:* Los Angeles, CA, San Diego, CA, Hartford, CT, New York City (NY–NJ–CT), Philadelphia (PA–NJ–DE–MD), Baltimore, MD, Houston, TX, Chicago (IL–IN–WI), Milwaukee, WI, and Sacramento, CA. *Opt-in areas:* Part or all of CT, DE, DC, KY, MD, MA, MO, NH, NJ, NY, RI, TX, and VA. Kansas City, MO and Kansas City, KS are former nonattainment areas which tried to opt into the program. On January 4, 2000, the U.S. Court of Appeals for the District of Columbia overturned EPA's final rule to allow former nonattainment areas to opt into the RFG program. This decision prohibits EPA from approving the opt-in requests submitted to the Agency on July 28, 1999, by Governors Carnahan and Graves.

EPA is concerned about the presence of MTBE in ground and surface water. In December 1998, EPA established a panel of independent experts to examine MTBE's performance in gasoline, its presence in water, and alternatives to its use. Panel recommendations made to EPA in July 1999 include:

- Ensure no loss of current air quality benefits from RFG.
- Reduce the use of MTBE, and seek Congressional action to remove the oxygen requirement in RFG.
- Strengthen the nation's water protection programs, including the Underground Storage Tank, Safe Drinking Water, and private well protection programs.

EPA is committed to working with Congress to provide a targeted legislative solution that maintains the air quality benefits of RFG while allowing reductions in the use of MTBE. EPA will also protect water supplies by continuing to enforce the UST requirements and by enhancing remediation programs.

Today's action implements the panel's recommendation that EPA take steps within its authority to reduce the amount of MTBE used in gasoline. This proposed rule could reduce the amount of MTBE refiners use in RFG by increasing the flexibility for refiners to blend ethanol into RFG. It will provide continued assurances for ethanol use in the Midwest and incentives for other areas looking to use ethanol.

On March 20, 2000, the Administration announced legislative principles for protecting drinking water supplies, preserving clean air benefits, and promoting renewable fuels. The following legislative principles taken together as a single package are designed to maintain air quality and enhance water quality protection while preserving the significant role of renewable fuels, most importantly ethanol:

1. Amend the Clean Air Act or provide the authority to significantly reduce or eliminate the use of MTBE;

2. As MTBE use is reduced or eliminated, ensure that air quality gains are not diminished;

3. Replace the existing oxygen requirement contained in the Clean Air Act with a renewable fuel standard for all gasoline.

In addition to today's action, EPA on March 24, 2000, published an Advanced Notice of Intent to Initiate Rulemaking to reduce or eliminate MTBE from gasoline, under Section 6 of the Toxic Substances Control Act (65 FR 16093).

2. Summary of Today's Action

EPA proposes to adjust by 1.0 percentage point the Phase II VOC performance standard for reformulated gasoline blends with 10 volume percent ethanol (approximately 3.5 weight percent oxygen). As discussed in Section I.B., section 211(k)(1) of the CAA directs EPA to promulgate regulations that require the greatest reduction in emission of ozone forming VOCs achievable through the reformulation of conventional gasoline. This section also directs EPA, in promulgating such regulations, to consider the cost of achieving such emission reductions and any nonair-quality and other air-quality related health and environmental impacts. With today's action EPA is exercising its discretion to consider cost and other environmental concerns in its implementation of the VOC performance standards.

The current Phase II VOC performance standards (as well as the proposed adjusted standards) require VOC emission reductions greater than those mandated by section 211(k)(3) of the CAA. In promulgating the current VOC standards, EPA exercised both its 211(k)(3) authority (to impose VOC emission reductions of approximately 25% and additional reductions based on technological feasibility and cost), and its 211(k)(1) authority (to require the greatest VOC emission reductions achievable considering cost and various environmental factors).

In light of certain cost and environmental considerations EPA is reevaluating the appropriateness of some of the current VOC emission reduction requirements for certain blends of RFG. The considerations that compel the proposed VOC adjustment include: (1) The incremental cost increase associated with producing Phase II ethanol RFG; (2) the potential for an adverse environmental impact (contamination of groundwater) from use of MTBE, and the interest in increasing the flexibility available to refiners to reformulate without MTBE; and (3) the unlikelihood that today's action will undermine the ozone benefits of the RFG program. For purposes of evaluating these considerations and reaching a decision to undertake today's proposed action, EPA has relied upon several sources, including, a cost study on ethanol RFG blends conducted by the Department of Energy (DOE) at EPA's request; [2] and the recommendation of the Blue Ribbon Panel on Oxygenate Use. The cost factors related to production of ethanol RFG are discussed in Section I.E, and the Blue Ribbon Panel recommendations are discussed in Section I.C.1.

In proposing this action EPA also recognizes the fact that the oxygen content of gasoline affects the amount of carbon monoxide (CO) emissions from automobiles. The National Research Council recommended that ''the contribution of CO to ozone formation should be recognized in assessments of the effects of RFG'' in its report ''Ozone-forming Potential of Reformulated Gasoline,'' p. 6, National Academy Press, 1999. Accordingly, today's action considers the ozone benefits of CO emission reductions resulting from the use of oxygenates in the RFG program.

Oxygenates, like ethanol and MTBE, lead to reductions in emissions of CO from 1990 technology cars, the benchmark used for the RFG program. The level of CO reduction is a function of the amount of oxygen in the fuel. MTBE-blended RFG typically contains 2.0 weight percent oxygen. Ethanol, on the other hand, is typically blended in RFG at levels of 10 volume percent which equates to approximately 3.5 weight percent oxygen; thus, the oxygen content in ethanol-blended RFG is typically higher than in MTBE-blended RFG. The CO reduction attributable to the typical ethanol-blended RFG (with 3.5 weight percent oxygen) is therefore greater than that attributable to the typical MTBE blend (with 2.0 weight percent oxygen). The impact of the proposed VOC adjustment on air quality is discussed further in Section I.F.

Refiners that choose to use ethanol to provide 3.5 weight percent oxygen, the maximum allowed under the RFG program, may take advantage of the adjusted VOC standard which applies during the summer ozone season when VOC emissions are controlled in the RFG program. This option may be particularly attractive in the Midwest where state tax incentives combine with federal tax incentives to encourage use of ethanol at the maximum amount permitted by the RFG program.

3. Per Gallon Oxygen Minimum

We seek comment on whether we should propose elimination of the per gallon oxygen minimum. We believe such action might provide additional flexibility to refiners in their choice of oxygenates. Elimination of the per

[2] ''Transportation Fuels and Efficiency: Estimating Impacts of Phase 2 Gasoline Reformulation on the Value of Ethanol; Scenario Document'; G.R. Hadder, Oak Ridge National Laboratory; Oak Ridge, Tennessee; March 17, 1999. This document is available in the public docket for this proposed rulemaking.

gallon minimum may allow refiners to use little or no oxygenate during the summer ozone season, thus reducing the modest cost associated with summer ethanol use. Even if refiners that currently use MTBE choose to continue using MTBE during the summer ozone season, and use ethanol during the non-ozone season, the use of MTBE may be significantly reduced.

We request comment on the alternative approach of lowering, rather than removing the oxygen minimum, which would retain the benefits of the requirement while reducing the small potential for any adverse impacts.

D. Volatility Associated With Ethanol RFG Blends

One way to reduce VOC emissions from gasoline is to reduce the volatility of the gasoline, measured in Reid Vapor Pressure (RVP). EPA expects that the summer RVP levels during Phase II of the RFG program will have to average about 6.7 pounds per square inch (psi) in order for the fuel to meet the VOC performance standard. In Phase I RFG, summer RVP averaged approximately 8.0 psi in the north and 7.0 psi in the south.

When added to gasoline in the amount needed to satisfy the oxygen content requirement of the Act, ethanol raises the RVP of the resulting RFG blend by about 1.4 psi. For an ethanol RFG blend to meet the VOC performance standard, refiners must use a blendstock gasoline with an RVP low enough to offset the increase resulting from adding ethanol. According to a cost study on ethanol RFG blends—conducted by DOE at EPA's request and available in the public docket for this proposed rulemaking,[3] the change in average manufacturing cost of reducing the RVP of blendstock intended for ethanol-blended RFG to a level that ensures compliance with the current Phase II VOC performance standard is approximately $0.01 per gallon of RFG for refiners currently using ethanol. Based on DOE's modeled 1.4 psi increase, this cost reflects the 1.4 psi RVP reduction necessary to offset the RVP increase associated with ethanol. (DOE's cost impact was derived by comparing the cost of reducing the RVP in Phase I RFG with 10 volume percent ethanol, to the RVP level necessary to comply with the Phase II RFG performance standard for VOC.)

The ethanol industry has raised concerns that any incremental cost associated with using ethanol in Phase II RFG may lead to a switch to the use of MTBE, because the more stringent VOC standard of Phase II RFG will require a lower RVP blendstock for ethanol blending.

This summer, ethanol appears to be maintaining its market share in the Chicago and Milwaukee RFG programs; however, for the future it is difficult to predict the geographic distribution of specific oxygenates in Phase II with any certainty. Specifically, in March 1998 EPA wrote to several oil companies serving the Midwest to learn their plans for ethanol use in Phase II of the RFG program. EPA contacted companies that supply a major portion of the Chicago and Milwaukee RFG markets. EPA was told that the price of ethanol relative to other oxygenates will be the determining factor in ethanol use in Phase II of the program. One company told EPA it plans refinery modifications of low to moderate cost that will allow continued use of ethanol year-round; other companies said they would evaluate the price of each oxygenate and, if MTBE was less expensive, they would consider using ethanol during the eight month non-ozone season, but MTBE may be their choice during the ozone season.

EPA wishes to ensure the stability of the RFG program in the Midwest and to avoid any significant disincentive for the use of ethanol. EPA also wants to increase the flexibility for refiners currently using MTBE elsewhere in RFG areas to switch to ethanol. Still, it remains of primary importance that Phase II RFG continue to achieve significant reductions in toxics and in ozone precursors, given RFG's key role in states' ozone control strategies.

E. VOC Standard Adjustment

We are proposing to reduce by 1.0 percent the Phase II VOC standard for ethanol RFG blends containing 10 volume percent ethanol. Phase II RFG would retain the current average VOC standards of 27.4 percent and 29 percent for northern (Class C) and southern (Class B) areas, respectively, and per-gallon standards of 25.9 percent and 27.5 percent for northern and southern areas, respectively. For RFG blends with 10 volume percent ethanol, however, the average VOC standards would be adjusted to 26.4 percent and 28 percent for northern and southern areas, respectively, and the per-gallon standards adjusted to 24.9 percent and 26.5 percent for northern and southern areas, respectively.

EPA intends this adjustment to provide additional flexibility for refiners to produce ethanol-blended RFG. The proposed adjustment to the Phase II VOC standard would work to offset the incremental costs associated with the production of ethanol-blended RFG that are created by the RVP increase caused by ethanol. Thus, the proposed adjustment would reduce the cost of ethanol blends and provide refiners with additional flexibility.

EPA believes this adjusted VOC standard maintains the air quality benefits of the RFG program while reducing the cost of using ethanol. The increased flexibility the rule would provide for refiners would help refiners reduce the use of MTBE in RFG.

As discussed in Section I.D., the addition of ethanol raises the RVP of gasoline by approximately 1.4 psi. Under the proposal, the adjusted VOC standard would result in an increase of RVP of approximately 0.2 psi for ethanol blends of RFG. We cannot adjust the standard for ethanol-blended RFG to account for the entire RVP impact of ethanol because an increase in RVP of approximately 1.4 psi in the volatility of RFG would result in a complete loss of emission reductions that would be achieved under Phase II, as well as a partial loss of benefits achieved under Phase I.

Even with the proposed adjustment, Phase II RFG will continue to be a strong VOC reduction program and will meet all the requirements of the Clean Air Act. By limiting the adjustment to 1.0 percentage point for ethanol blends, the change in stringency of the VOC standard for ethanol blends is relatively small. This adjustment will still require ethanol RFG blends to achieve significant VOC reductions beyond those required during Phase I of the program. EPA believes this proposal will not undermine the important benefits of Phase II RFG as an ozone control strategy. EPA believes that this level of adjustment will increase flexibility to switch to ethanol and reduce the incentive for refiners to switch to MTBE while maintaining the air quality benefits of the RFG program. EPA's reasons for this belief are discussed in more detail in Section I.F.

EPA requests comment on additional areas of flexibility for implementation and interaction with other emissions control requirements that the public may wish to suggest, and the possible benefits to such flexibility.

F. Evaluation of Air Quality Impacts of the Proposed Rule

Ethanol blends at 10 volume percent, the typical blending level of ethanol, contain 3.5 percent by weight oxygen in the fuel and achieve significant reductions in CO emissions because the amount of CO reduction increases as oxygen increases. Preliminary emission

[3] Op. Cit.; Hadder, Oak Ridge National Laboratory; Oak Ridge, Tennessee; June 14, 1999.

estimates using version 5b of the Mobile model indicate that at the adjusted VOC level proposed today, the use of RFG with ethanol at 10 volume percent would reduce emissions of CO by approximately 24 tons for every 1 ton increase in VOC emissions associated with the use of those blends. (See the technical support document in the docket (A–99–32) for this rulemaking; document number II.B–2.)

As recognized in a study conducted by the National Research Council (NRC),[4] CO contributes to ozone formation and is present in ambient concentrations due in part to the large volume of CO emissions from mobile sources. There is no dispute that CO emissions contribute to ozone formation. The Urban Airshed Model (UAM) relied on by states in their State Implementation Plan submissions includes inventories of CO emissions as well as VOC and NO_X. While the role of CO in the formation of ozone is limited when compared to the effect of VOC and NO_X, the volume of CO emissions from motor vehicles is comparatively large and therefore is not ignored in photochemical modeling demonstrations.

While it is difficult to quantify the overall ozone impact of a specific change in emissions of CO and VOC, clearly a reduction in CO should directionally reduce ozone, and an increase in VOC should directionally increase ozone. The combined impact on ozone of a change in emissions may vary depending on a variety of environmental conditions, including meteorology. However, given that CO does play a role in ozone formation, the relatively large decrease in CO emissions will offset some, if not all, of any potential increase in ozone formation due to the relatively small increase in VOC emissions. (See the technical support document in the docket (A–99–32) for this rulemaking; document number II.B–2.) Thus, EPA is generally confident that the adjusted standard will achieve ozone reductions that are similar to those anticipated from the current standard, and will assure that the Phase II RFG program will continue to achieve the significant environmental benefits for which it was designed. Furthermore, the adjusted standard will achieve the additional environmental benefits associated directly with decreased CO emissions and the benefits associated with the decreased use of MTBE.

In establishing a change of 1.0 percent in the VOC performance standard, EPA's intent is to take a conservative and cautious approach to ensure that RFG will continue to provide the same level of overall benefits as the existing RFG requirements. EPA is soliciting comment, however, on whether the Agency should also consider adjustments to the VOC standard that are less than or greater than 1.0 percentage point.

With respect to adjustments to the VOC standard greater than 1.0 percentage point, the Illinois Environmental Protection Agency (IEPA) submitted to EPA a proposal and supporting analysis which suggests that EPA should allow a VOC adjustment of 3.7 percentage points—approximately equivalent to an increase in RVP of 0.5 psi. (See Docket A–99–32, document file numbers II.D.3, II.D.5 and II.D.6.).

Briefly, IEPA's analysis compares the VOC and CO emissions associated with a ''complying fuel'' (assuming a RVP of 6.8 psi and an oxygen content of 2.0 percent by weight) to the emissions associated with a fuel having an RVP of 7.3 (representing an increase in RVP of 0.5 psi) and an oxygen content of 3.5 weight percent. Using a relative reactivity analysis, IEPA concluded that the ozone impact of these two fuels would be identical, and that EPA should therefore provide an adjustment that corresponds to an RVP increase of 0.5 psi. Although EPA is not proposing to adopt the approach recommended by IEPA, the Agency requests comments on such an approach.

The IEPA analysis is based primarily on the use of relative reactivity factors. Relative reactivity factors are values for various types of VOCs and CO that represent a predicted amount of ozone formation, expressed as unit mass of ozone per unit mass of VOC or CO.

EPA is not proposing to use a reactivity analysis as the basis for this regulatory action for several reasons. First, the National Research Council did not recommend that EPA do so. In its May 1999 report, NRC stated, ''The committee sees no compelling scientific reasons at this time to recommend that fuel certification under the RFG program be evaluated on the basis of the reactivity of the emissions components.'' Second, in the same report NRC stated, ''So-called reactivity factors * * * are often uncertain and of limited utility for comparing similar RFG blends.'' EPA agrees with the NRC that the reactivity factors that have been developed to date, and were used by IEPA, may not accurately reflect actual photochemical reactivity of various ozone precursors. In recent regulatory decisions, EPA has expressed these concerns and others related to the use of relative reactivity factors [63 FR 48792, September 11, 1998]. In particular, EPA is concerned that the factors do not represent the wide variation in atmospheric conditions that exist across the country and have a large influence on ozone formation.

While today's proposed rule does incorporate a recognition of the fact that, in general, CO is relatively less reactive than VOCs, EPA agrees with the NRC that it is not possible to precisely identify the relative reactivity of such compounds at this time in a manner that is meaningfully predictive of ambient conditions and that can reliably form the basis of a regulatory program. (see Technical Support Document in Docket A–99–32, document number II.B.–2) EPA is, however, currently participating in an industry/academic/government workgroup whose goal is to identify research needs in the area of VOC reactivity. EPA anticipates that significant research results may be available in a year or possibly longer, which will assist us in any reexamination of our current VOC regulatory policy in selected instances. Until there are more data generated from this process, EPA believes that it may be premature to base any regulation on a precise quantification of the distinctions between reactivities of VOCs. The Agency is interested in and solicits comments on IEPA's approach or other reactivity-based approaches.

As explained earlier in this preamble, EPA believes that an adjustment to the VOC standard greater than 1.0 percentage point risks too great a loss in the mass VOC benefits of Phase II RFG. (See Technical Support Document in docket A–99–32,document number II.B.–2). When evaluated on a mass basis using EPA's complex model, IEPA's approach would result in approximately a 37 percent decrease in the incremental amount of VOC emissions reduced between Phase I and Phase II RFG.

Finally, we are also concerned with the effect of fleet turnover and the potential for reduced CO benefits associated with advances in engine technology which is discussed in further detail in Section I.M of the preamble. For this reason, EPA is soliciting comment on whether EPA should re-evaluate the adjusted VOC performance standard in several years to determine whether the proposed adjustment still makes sense in light of technology advances and fleet turnover. This re-evaluation will also provide EPA the opportunity to assess the ozone impact of this proposal in light of any

[4] ''Ozone-Forming Potential of Reformulated Gasoline'; National Research Council; Washington DC; May, 1999.

relevant scientific advances in determining ozone impact.

G. Ozone Reduction Benefit in Areas That Currently Use Ethanol

In developing the VOC adjustment in today's proposal, EPA believes that it is important to preserve, as much as possible, the ozone benefits of the current Phase II RFG standards. For areas that presently do not use RFG with ethanol as an oxygenate, this action may lead to an increase in ethanol use. If so, there would probably be an increase in the amount of oxygen in the fuel (*i.e.,* oxygen would increase to 3.5 weight percent from a baseline level of 2.1 weight percent). The increase in oxygen would result in an associated decrease in CO emissions and, under this proposal, a slight increase in VOC emissions. We believe that this proposed rule would allow areas switching to ethanol RFG to realize Phase II RFG ozone benefits that are similar to current Phase II benefits.

In areas that presently use RFG with ethanol as the oxygenate (*e.g.,* Chicago and Milwaukee), the oxygen level in the fuel currently averages 3.5 weight percent oxygen. EPA believes that without this rule change and without changes to the Act's oxygen content requirement for RFG, there is some probability that less ethanol (and more MTBE) will be used in these areas. If this occurs, there would be a drop in the oxygen level in the fuel which would result in increases in CO emissions. Thus the CO reduction benefit in the Midwest associated with the use of ethanol RFG (at 3.5 weight percent oxygen) would not be preserved. Today's action is intended to provide additional flexibility to assure that refiners will continue to use ethanol, thus helping to preserve the current CO benefits associated with ethanol RFG. Moreover, as discussed in Section I.K of the preamble (Oxygen Crediting), refiners that take advantage of the adjusted VOC standard would not be allowed to generate oxygen credits for RFG in other areas. This will avoid double counting the benefits of the additional oxygen. If the additional oxygen above 2.0 weight percent in ethanol RFG which results in a reduction in CO in a given area is also used as a credit for a fuel with less than 2.0 weight percent oxygen in other areas, the CO benefit in those areas would be lost. Under this proposal less oxygen credits would be available; therefore, fuel in other areas will need to use more oxygen, which ultimately lowers CO emissions elsewhere.

If we did not expect ethanol use to decline with Phase II RFG, (*i.e.,* the current 3.5 weight percent oxygen level remains as the baseline), then continued use of RFG with ethanol in light of the proposed VOC adjustment would represent neither an increase in oxygen in the fuel, nor an additional reduction in CO emissions. Such situation raises the question of whether the increase in VOC allowed by the proposed adjusted VOC standard could then be said to result in a lesser ozone benefit. However, when the Phase I RFG program was implemented in 1995, ethanol use, and hence oxygen levels, in the Midwest increased above previous levels. (According to a 1994 survey performed by the American Automobile Manufacturers Association, the average oxygen content of gasoline in the Chicago area was less than 2.0 weight percent.) With the implementation of the Phase I RFG program, gasoline oxygen levels in Chicago and Milwaukee increased to 3.5 weight percent resulting in a decrease in CO emissions. These CO emission reductions were not credited under Phase I of the RFG program. Those uncredited CO reductions have likely resulted in more ozone benefits than would have been realized otherwise.

The National Research Council has recommended that EPA recognize, in the RFG program, the ozone benefits from CO reductions. Accordingly, we believe our consideration in this proposed rule of CO reductions associated with the use of ethanol RFG is appropriate. Although the adjusted VOC increase would, in the worst case, eliminate the additional ozone benefit, the air quality would be no worse in the Midwest than would otherwise be the case under an ''unadjusted'' VOC standard in Phase II of the program. Moreover, given the assumption that ethanol use would not decline with Phase II RFG, we believe that the nationwide effect of the adjusted VOC standard would not result in an ozone disbenefit. This is because of the reason explained above relating to limitation on use of oxygen credit trading.

Finally, although the increase in VOC is expected to slightly increase air toxics, we are not proposing to adjust the air toxics performance standard. A minimal loss in toxics overcompliance is expected in areas that currently use ethanol as a result of this proposal. Some toxics overcompliance would be lost in areas that switch from MTBE to ethanol; however, we believe the loss, if any, would be modest.

Therefore, EPA believes that the proposed rule would substantially preserve the air quality goals of the Phase II RFG program.[5]

H. Impact of Proposed Approach on SIPs

The adjusted VOC standard for ethanol RFG will allow a slight increase in VOC where ethanol blends are used. States are required to meet specific VOC reduction goals in their respective State Implementation Plans (SIPs); specifically the 3.0 percent Rate of Progress (ROP) requirement of Section 182(c)(2)(B)(i). Some states rely on reductions from the RFG program in meeting these goals. EPA has determined that the increased VOC associated with the adjusted VOC standard should not affect states' ROP plans in the near term.

As discussed in Section I.D., current market uncertainty makes it difficult to predict the mix of ethanol and MTBE RFG in any one area. Given such uncertainty, we believe that the increase in VOC resulting from the flexibility proposed today cannot now be adequately quantified; moreover, any increase is likely to be a very small portion of an area's total emissions. Also as discussed in Section I.F above, we believe the reduction in CO associated with ethanol use will substantially preserve the benefits of Phase II RFG.

Therefore, we are proposing at this time that states are not required to account for any potential increase in mass VOC emissions associated with the proposed adjusted performance standard. In time, however, as more data on oxygenate use and distribution becomes available, we intend to consider this issue and assess the impact of any VOC increases on the states' attainment of the ROP goal. Accordingly, we propose to amend the Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration'' to indicate that states are not required to evaluate whether there will be an increase in mass VOC emissions as a result of adjusted VOC gasoline, for several years. Prior to that time, EPA will begin an evaluation of market conditions with respect to ethanol and MTBE use and decide whether there is sufficient market predictability for state ROP plans to account for any subsequent increases in mass VOC emissions resulting from adjusted VOC gasoline. We solicit comment on this approach and the need

[5] The discussion in this section is limited to the scenario in which the current level of ethanol RFG penetration in Chicago and Milwaukee is maintained. In Section I.H. below we consider the fact that future penetration levels of ethanol RFG in these areas are difficult to quantify, and what effect the VOC adjustment has on state ROP goals.

for any future evaluation. We also solicit comment on the timing and appropriateness of the magnitude of the changes in VOC emissions this rule would have.

I. Oxygen and Performance Standard Averaging

The regulations under 40 CFR 80.41 provide both ''per-gallon standards'' and ''averaged standards'' for performance standards and oxygen content. Therefore, refiners, importers and oxygenate blenders would be able to meet the proposed performance standards by producing ethanol RFG that meets the proposed 26.4 percent performance standard for VOC, on average, as long as on a per gallon basis the ethanol RFG meets a minimum VOC performance standard of 23.4 percent.

The regulations allow refiners to produce fuels that on an average basis achieve the minimum 2.1 weight percent oxygen standard, as well as the VOC performance standard. While the proposed VOC adjustment does not affect oxygen averaging, it does affect how VOC compliance is calculated.

We are therefore proposing a change in the method for determining compliance with VOC performance standards. Under the current regulations, a refiner or importer supplying averaged RFG or reformulated gasoline blendstock for oxygenate blending (RBOB) must calculate compliance with RFG standards according to a procedure described in 40 CFR 80.67 of the regulations. Refiners are required to determine compliance for each portion of gasoline for which standards must be separately achieved, and for each relevant standard. Suppliers must make separate compliance determinations for each VOC control region since different VOC performance standards apply to RFG designated for VOC Control Region 1 (southern or Class B) and VOC Control Region 2 (northern or Class C).

Today's proposed regulation creates an additional set of averaged VOC performance standards applicable to ''adjusted VOC gasoline'' and RBOB used to make ''adjusted VOC gasoline''. (As discussed in Section I.K below, we are proposing to define ''adjusted VOC gasoline'' in 80.40.) Therefore, suppliers could potentially have portions of their RFG/RBOB subject to one of four different standards. Under the procedure currently specified in 80.67, suppliers would have to demonstrate that each of these portions complies separately with the relevant standard.

In order to accommodate the effect of these additional standards on compliance determinations, we are proposing to alter the calculation procedure in the regulations. With this modification suppliers will not have to separately comply with the non-adjusted and ''VOC-adjusted'' standards, but will continue to determine compliance by VOC control region.

Section 80.67 requires that a compliance total be calculated as:

$$\text{Compliancetotal} = \left[\sum_{i=1}^{n} V_i\right] \times \text{Std}$$

where V_i is the volume of gasoline batch i, Std is the standard for the parameter being evaluated, and n is the number of batches included in the averaging period.

This compliance total is compared with an actual total which is calculated as:

$$\text{Actualtotal} = \sum_{i=1}^{n}\left(V_i \times \text{parm}_i\right)$$

For VOCs, parm_i is the complex model emissions reduction of gasoline batch i, and compliance is achieved if the actual total is equal to or greater than the compliance total.

We are proposing for VOC performance compliance calculations that Std be replaced by a volume-weighted average of the two standards applicable to the RFG and RBOB which a supplier designates for a specific VOC control region *i.e:*

$$\text{Std} = \frac{\text{Std}_u \times \sum_{i=1}^{n_u} VU_i + \text{Std}_a \times \sum_{i=1}^{n_a} VA_i}{\sum_{i=1}^{n_u} VU_i + \sum_{i=1}^{n_a} VA_i}$$

Std_u and Std_a are the ''unadjusted'' and ''adjusted'' averaged standards applicable to a VOC control region. VU_i and VA_i are the volumes of the batch i of ''unadjusted'' and ''VOC-adjusted'' RFG and RBOB which a supplier designated for that control region, and n_u and n_a are the number of batches in each category. We believe that this approach allows the supplier more flexibility in meeting the VOC performance standards without adverse environmental consequence.

We also believe that this approach minimizes the changes to the RFG reporting system procedures necessary to report, compute and verify compliance calculations. (The RFG reporting system is a data collection system through which suppliers report to EPA gasoline properties, emissions performance calculations, volumes and other data necessary to determine compliance with regulations.) We recognize that reporting parties and ''third party'' software developers would have to respond to changes in reporting forms and procedures, and thus, that there is a benefit in minimizing changes to the current system. Creating an additional set of VOC performance standards is expected to have some impact on the reporting system regardless of the method of compliance calculations. For example, minor changes in reporting procedures may be necessary in order to unequivocally identify ''VOC-adjusted'' and ''unadjusted'' RFG and RBOB batches. However, this proposed change in the VOC compliance calculation procedure would avoid modifications to the VOC Emissions Performance Averaging Report which would be necessary if separate compliance with each VOC standard were still required.

We are soliciting comment on this proposed approach and any alternative compliance calculation approaches. We encourage parties to comment on both the environmental and administrative consequences of these approaches, including reporting and record keeping issues associated with this proposed regulation. Commenters should consider reporting and recordkeeping issues not only with respect to VOC compliance calculations, but with respect to other aspects of this regulation such as oxygen crediting.

J. Downstream Compliance and Survey Sampling

Theoretically, circumstances might arise where a mixture of two ethanol RFG blends (both of which independently meet the applicable VOC performance standard) results in a sample that does not meet the VOC performance standard, because while one of the fuels qualifies for the adjusted downstream standard, the other does not.

For ethanol-blended RFG, the ethanol is added to reformulated blendstock for oxygenate blending, or RBOB, at the terminal. In areas of the country that currently use ethanol there is not likely to be the same variation in oxygen levels seen with MTBE blends; the RFG will typically contain ethanol in amounts close to 10 volume percent. We base this finding on survey data for summertime RFG which support the expectation that ethanol will be blended at 10 volume percent due to marketing considerations. (The statistical analysis of the survey data has been submitted to the docket for this rulemaking.) For 1999, of 3,295 samples of ethanol RFG, over 90 percent of the samples contain oxygen levels at or close to 3.5 weight percent, which equates to

approximately 10 volume percent ethanol. (Depending on the specific gravity of the gasoline to which the ethanol is added, the various blends near 3.5 weight percent oxygen could theoretically all be 10 volume percent.) Based on industry practice, therefore, we do not believe that there will be a problem related to downstream compliance, but we solicit comment on this issue.

Another ''downstream'' issue associated with this proposed regulation is the interaction between the adjusted VOC standard and the RFG surveys required by the RFG regulations. Gasoline samples collected from retail stations in an RFG covered area in each one-week survey conducted during the summer ozone season (June 1–September 15) are evaluated for complex model VOC performance. (Covered areas are geographic areas using RFG and are defined in 40 CFR 80.70.) If the survey average VOC reduction for any survey is less than the applicable per-gallon standard for VOC emissions reduction, the covered area fails the VOC survey. (RFG surveys are discussed more fully in sections of this preamble addressing the oxygen minimum.)

This proposed regulation creates an additional set of per-gallon VOC standards potentially applicable to a portion of the RFG in each covered area. Since each individual gasoline sample collected is analyzed for type and amount of oxygenate, it can be determined which of the VOC standards applies to the gasoline in its current state.

The existence of dual standards creates some difficulty in the implementation and enforcement of the survey regulations. It is necessary to collect a sufficiently large number of samples to ensure that precision requirements for estimating parameter averages are met. These required sample sizes are determined in advance of the surveys, and are specified in the survey design plan. Under the current survey scheme there is no way to guarantee that the sample size for each RFG standard group would be sufficient to meet these precision requirements. A survey could be conducted, the samples analyzed and categorized according to the applicable standard, and the average computed for each of the two groups. However, the number of samples falling into each group would not be known in advance of sample collection and analysis.

A more feasible approach to determining survey compliance would be to calculate a VOC standard applicable for each survey by weighting each of the per-gallon standards by the proportion of samples in that group. For example, suppose 100 samples were collected in a survey in a covered area in VOC Control Region 2, and 70 contained ethanol at 3.5 weight percent oxygen while the remaining 30 did not. The applicable survey requirement would be calculated as (0.70)(24.9)+(0.30)(25.9)=25.2 percent VOC reduction. We are proposing to change the RFG regulations to incorporate this approach.

K. Oxygen Crediting

Refiners and importers are currently able to meet the averaged standard for oxygen through the exchange of credits under 40 CFR 80.67(h). Credits are generated as a result of a refiner producing, or an importer importing, gasoline that on average exceeds the averaged standard for oxygen over the averaging period. An oxygenate blender using the averaged oxygen standard may generate, or use, oxygen credits.

We have considered whether an adverse effect on air quality would occur if refiners or importers that qualify for the adjusted VOC standard (*i.e.,* make an RFG with 10 volume percent ethanol) also exchange oxygen credits under 40 CFR 80.67(h). We believe that there would be a disbenefit to air quality because the oxygen credit would be sold to a refiner making an RFG with an oxygen level less than 2.0 weight percent in the fuel. The additional oxygen that results in a reduction in CO in the 10 volume percent ethanol RFG would be used as a credit for a fuel with less than 2.0 weight percent oxygen. At such lower levels of oxygen, there would be an increase in CO which, as discussed earlier, plays a role in the formation of ozone in the atmosphere.

The adjusted VOC standard proposed today is based on ethanol RFG blends that contain 3.5 weight percent oxygen. We recognize that there may be some refiners or importers that may wish to take advantage of the oxygen credit trading program as it applies to the averaged oxygen standard. (This would be especially true if we were to adopt the elimination of the oxygen minimum requirement which is discussed in Section II of the preamble and on which we are soliciting comment.) Therefore, in order to offer refiners and importers flexibility, we are proposing to allow refiners that make RBOB for blending with 10 volume percent ethanol a choice of complying with the VOC adjusted standard or with the current (non-adjusted) VOC standard by defining ''adjusted VOC gasoline'' in 80.40. In the revised 80.40 refiners have the choice of designating gasoline with 10 volume percent ethanol as ''adjusted VOC gasoline'' or not. If they choose not to, the gasoline must comply with the more stringent (*i.e.,* non-adjusted) VOC standard. In this way batches of RFG blends that contribute oxygen above the oxygen standard and which comply with the non-adjusted VOC performance standard may be used by refiners or importers for the purpose of generating oxygen credits. Batches of RFG blends containing 10 volume percent ethanol which comply with the adjusted VOC standard, however, may not generate oxygen credits.

We are proposing to modify 40 CFR 80.67(h) to reflect which ethanol RFG may be used for generating oxygen credits. We solicit comment on this proposal as well as whether we should alternatively consider a requirement that *all* ethanol RFG blends containing 10 volume percent ethanol be ineligible for generating oxygen credits.

Allowing refiners the flexibility to comply with either of the VOC standards for ethanol RFG would require extensive tracking and segregation of the different types of RBOB downstream of the refineries. As discussed in Section I.L. below, we are also proposing to require that the Product Transfer Document designate the type of RBOB and whether it is to be used to make ''adjusted VOC gasoline''.

L. Product Transfer Documentation

Today's action proposes to require that the Product Transfer Document (as specified in 40 CFR 80.77) designate the type of RBOB (*i.e.,* which contains no ethanol, which contains ethanol less than 10 volume percent, or which must contain ethanol at 10 volume percent and which is used to make ''adjusted VOC gasoline''). EPA believes that such designation is sufficient to allow tracking of the different types of ethanol blends as well as providing documentation of the VOC standard (*i.e.,* adjusted or non-adjusted) with which a refiner may choose to comply. EPA solicits comment on this change.

We believe that the Product Transfer Document provides a workable solution to tracking the RBOB for ethanol RFG products including requiring refiners to conduct oversight at retail stations receiving that RBOB. If there were sufficient variation in the levels of ethanol used in ethanol RFG blends, such level of oversight might be necessary. As discussed in Section I.J., the industry practice for ethanol RFG is to blend ethanol at 10 volume percent. We are proposing a change in the regulations to exempt from the quality assurance and sampling requirements of

40 CFR 80.69(a)(7) ethanol RFG that qualifies for the adjusted VOC standard. EPA solicits comment on this change.

M. Future Vehicles

The adjusted VOC standard is premised in part on the expectation that RFG blends containing 10 volume percent ethanol (3.5 weight percent oxygen) will achieve larger reductions in CO emissions than RFG blends with oxygenates at the level of 2.0 weight percent oxygen. It is possible that future vehicles will employ advanced technology that will significantly reduce CO emissions, irrespective of the oxygen content in the fuel, and consequently negate the importance of the impact of gasoline oxygen content on CO emissions.

We expect that we will learn about the CO emissions performance as time passes. We request comment on this issue and on whether (and when) EPA should evaluate the relationship between advanced vehicle emission control technology and the oxygen content of gasoline on CO emissions.

II. Elimination of Oxygen Minimum Requirement

A. Background

The Clean Air Act (CAA) section 211(k)(2)(B) requires that reformulated gasoline (RFG) contain 2.0 percent oxygen by weight. Our RFG regulations, in 40 CFR 80.41, specify standards for various fuel parameters, including oxygen content. The regulations provide both ''per-gallon standards'' and ''averaged standards'' for each parameter. Refiners, importers and oxygenate blenders may meet the oxygen content requirement by producing RFG which contains at least 2.0 percent oxygen in every gallon, or by producing RFG with 2.1 percent by weight oxygen on average, over the course of a calendar year, as long as no gallon of RFG contains less than 1.5 percent oxygen. This 1.5 percent lower limit is called the ''per-gallon minimum''.

The CAA section 211(k)(7) requires an oxygen credit program. The averaged standard for oxygen may be met with the help of oxygen credits. Oxygen credits are created when any refiner makes RFG above the 2.1 percent average requirement over the course of a calendar year. Credits may, with certain restrictions, be transferred from one refinery to another, but cannot be used to meet the per-gallon minimum. Thus, some parties may produce RFG with average oxygen content in excess of the standard while others may produce RFG with average oxygen content below the standard as long as the average oxygen content of all RFG meets the oxygen content standard.

These provisions for compliance on average provide more flexibility to refiners, importers and oxygenate blenders. We recognized when we promulgated the RFG regulations, that allowing for compliance on average as an alternative to adherence to a per-gallon standard could result in some ''covered areas'' not receiving the same quality of RFG that they would have received without averaging. Therefore, we built into the regulations several mechanisms, described below, to mitigate this potential problem.

The averaged standards for all parameters are numerically more stringent than the per-gallon standards (*e.g.* for oxygen 2.1 percent vs 2.0 percent). Furthermore, certain of the parameters (oxygen, benzene and volatile organic compound emission performance), have a per-gallon minimum or maximum specification which gasoline producers may not exceed. These limit the amount of gallon to gallon variability that can occur. Since the oxygen per-gallon minimum is set at 1.5 percent, even under the worst-case scenario, the annual average oxygen content in a covered area could not fall below 1.5 percent.

In addition to these safeguards in the standards, EPA's regulations require refiners, importers and oxygenate blenders who choose to comply on average to conduct surveys, as specified in § 80.68. In these surveys, RFG samples are collected at retail gasoline stations within covered areas and analyzed to determine if the RFG supplied to these areas meets certain pass/fail criteria specified in § 80.68. For example, an oxygen survey series failure occurs in a covered area if the annual average oxygen content of the samples in that area is less than 2.0 weight percent. (An oxygen survey series consists of all the one week surveys conducted in a single covered area during a single calendar year.) These surveys measure all the fuel properties necessary to compare the samples with the RFG standards.

Each type of survey failure results in a specific ''ratcheting'' of a fuel-parameter-averaged standard and/or a minimum/maximum standard, as specified in § 80.41. For example, an oxygen survey series failure results in a tightening of the per gallon minimum by 0.1 percent. The effect of a survey failure even in a single covered area may be wide ranging since, in general, a ratchet will apply to the gasoline sold in any area by all refiners, blenders or importers that supplied the ratcheted area during the year of the survey failure, and by all refiners, blenders or importers that supply the area while the ratchet is in effect. Oxygen survey series failures have occurred in several covered areas in past years, and consequently, many refiners, importers and blenders are subject to a 1.7 percent per gallon minimum for oxygen, rather than the initial 1.5 percent minimum.

These ratchets correct, over time, any geographic disparities in the quality of RFG that might result from the use of a refinery based average standard. Suppose, for example, that oxygen survey series failures occur in successive years and the oxygen minimum for all suppliers to the failed covered area is ratcheted by another 0.1 percent every time a failure occurs, until the per-gallon minimum is 2.0 percent. Since the minimum oxygen content in each gallon of RFG being supplied to the failed covered area must be at least 2.0 percent, the annual average oxygen content for that area could not be less than 2.0 percent. The ratchets also provide an economic incentive to correct and avoid geographic deficiencies in the quality of RFG. If any RFG standard is incrementally tightened as a result of survey failures for some RFG parameter, it is likely that the cost of compliance with this standard for suppliers will increase. At some point it is likely that it would be economically advantageous to avoid geographic deficiencies and survey failures rather than face further tightening of a standard.

B. Potential Modifications

We are soliciting comment on removal of the per gallon minimum oxygen requirement applicable to RFG. We believe that removing the minimum would allow refiners, importers and oxygenate blenders more flexibility in meeting the RFG oxygen content requirement, without compromising the air quality benefits attributable to RFG. Eliminating the per-gallon oxygen minimum may cause oxygen levels to fluctuate more with time in any covered area. Consequently, in order to reduce the effect of such fluctuations on the accuracy of the survey estimates, we are also considering a change in the method for calculating the annual oxygen average from survey data. Finally, removing the per-gallon oxygen minimum requirement eliminates the availability of the oxygen minimum as a ratcheting tool in the event of oxygen survey series failures. Therefore, in order to ensure continued effectiveness of the surveys as a tool to correct and avoid geographic disparities in the

quality of RFG, we are also considering whether the requirement for reduction of averaged toxics emissions (per the complex model) should be made more stringent in the event of an oxygen survey series failure.

Removing the RFG per-gallon oxygen minimum would allow refiners, blenders and importers to market some non-oxygenated gasoline in RFG areas—so long as the annual average oxygen content of their RFG is at least 2.1 weight percent. Currently, under § 80.78, there is a prohibition against combining VOC-controlled RFG oxygenated with ethanol with VOC-controlled RFG produced using any other oxygenate during the period January 1 through September 15. We are soliciting comment on whether this prohibition should be extended to the combining of VOC-controlled ethanol RFG with any other VOC-controlled RFG (including RFG blends without oxygen) during the same time period. We are not proposing this change at this time, and will consider all comments in deciding whether to propose such a change in a future rulemaking. These issues are discussed below.

C. Elimination of RFG Oxygen Content Per-Gallon Minimum

Removal of the per-gallon minimum would allow producers of RFG more flexibility to vary the oxygen content in RFG on a seasonal basis. One foreseeable benefit to suppliers would be the option for suppliers, who might otherwise oxygenate their VOC-controlled RFG with ethanol, to produce a portion of their VOC-controlled RFG without oxygen. Suppliers would thus be able to produce a portion of their VOC-controlled RFG without utilizing the more costly blendstocks necessary to offset the Reid Vapor Pressure (RVP) boost associated with ethanol-blended RFG. The RVP boost from ethanol is not an issue in non VOC-controlled (winter) RFG, and oxygenate usage at sufficiently high levels in winter RFG could ensure that the oxygen content requirement is met on an annual average basis.

Removal of the per-gallon minimum may also facilitate a reduction in the use of methyl tertiary butyl ether (MTBE) in RFG. For example, some refiners who produce ethanol-oxygenated RFG with high levels of oxygen outside of the VOC-control season may elect to use MTBE as an oxygenate during the summer VOC-control season. Under the current regulation, these refiners would have to use enough MTBE during the summer to ensure that both the annual average oxygen requirement and the per-gallon minimum are met. The average level of oxygen needed during the summer to satisfy the annual average requirement could potentially be below the current per-gallon minimum requirement. Therefore, removal of the per-gallon minimum could reduce the total amount of MTBE that these refiners would need to use.

As discussed in Section I.C., the ''Blue Ribbon Panel on Oxygenates in Gasoline'', a panel of experts appointed by the EPA Administrator, has recommended that the use of MTBE should be reduced substantially in order to minimize current and future threats to drinking water.

We do not believe that the elimination of the oxygen per-gallon minimum would diminish the quality of RFG or the benefits attributable to RFG. However, the modifications to the survey and commingling provisions of the existing regulations, described below, will help to prevent or mitigate any potential problems. We recognize that, in addition to preventing geographic disparities in the quality of RFG, the oxygen minimum requirement is a useful tool for detecting the illegal presence of conventional gasoline in RFG areas. Elimination of the oxygen minimum would also eliminate this enforcement tool. However other minimum or maximum standards remain in place and these can be employed to help detect conventional gasoline sold as RFG. We request comment on whether the value of increased flexibility gained by removal of the oxygen minimum sufficiently justifies the loss of this enforcement tool. We are soliciting comment on the environmental and economic consequences of removal of the oxygen minimum.

D. Modification of Method for Calculation of Oxygen Survey Series Average

The elimination of the oxygen minimum and the proposed adjustment to the VOC standard may cause RFG oxygen levels to fluctuate substantially throughout the year, with the possibility of seasonal trends. Both of these changes may result in different levels of oxygen occurring in VOC-controlled and non VOC-controlled RFG produced by the same refineries and supplied to the same covered areas. Currently, § 80.68 of the RFG regulations specifies that for each covered area, the average oxygen content for all samples from the survey series shall be averaged, and if the annual average is less than 2.00 percent the area fails the survey series. Calculation of an annual oxygen content average in this fashion may produce an inaccurate estimate in a covered area if there is substantial temporal fluctuation in oxygen levels. The bias may be more pronounced if oxygen levels vary seasonally, since more surveys are conducted during the ''summer'' (June 1 through September 15) and the number of samples per summer survey is also greater.

We are considering whether the method of calculation for the oxygen survey series average should be changed. A potential modification in procedure would be to:

1. Determine an average for each survey,

2. Average the ''summer'' and ''winter'' (January 1 through May 31 and September 16 through December 31) survey averages separately to determine seasonal averages and

3. Weight the seasonal averages to estimate an annual average.

The summer average could be multiplied by 0.468, the winter average by 0.532, and the two terms be summed to estimate an annual average to be compared to the 2.00 percent survey requirement. These weights are already used in the regulations to calculate the annual average toxics emission reduction from toxics survey data.

This change in calculation method should probably be sufficient to reduce the potential for seasonal bias in the survey series estimate of the annual oxygen average. This change would also reduce the effect of scheduling of surveys on survey series outcomes. Although we do not conduct these RFG surveys, we determine when and where they occur. These surveys are multi-purpose; *i.e.,* the same samples collected for determination of compliance with the oxygen requirement are used to determine compliance with other RFG requirements. This concurrent sampling results in more samples being taken in each summer survey in order to satisfy VOC and NO_X survey precision requirements, and often, in more surveys being done during the summer months in order to effectively assess VOC and NO_X performance. Thus, our scheduling of surveys is not done with the sole objective of accurately estimating annual average oxygen content.

Under the current calculation method, our scheduling decisions could limit supplier flexibility in meeting the oxygen average and negate the intended benefits of this regulation change. For example, if refiners supplying RFG to a covered area elect to use high levels of oxygen in winter and low levels in summer, each additional summer survey that we schedule for that area is likely to decrease the estimate of the

annual average oxygen content and increase the chance for an oxygen survey series failure. Under the suggested method, scheduling an additional summer survey should not substantially affect the probability of oxygen survey series failure.

At this time, we are also inviting comment on changes in the method for calculating the average for toxics, benzene and non-ozone season NO_X survey series from an ''average of all samples'' method to an ''average of survey averages'' method. These changes are consistent with the methodology that we are considering for calculating the seasonal oxygen averages. We do not expect that these changes would have any substantial interaction with either the adjusted VOC standard or removal of the oxygen minimum provisions. The technical rationale for these changes is discussed in detail in the original proposal.[6]

In summary, we are soliciting comment on whether survey calculation procedures should be changed if the oxygen minimum is removed, and if so, whether our suggested approach is the most appropriate way to do this.

E. Modification to Provision for Effect of Oxygen Survey Series Failure

Generally, we recognize that removing the oxygen minimum might increase the likelihood of area-to-area variability in the oxygen content of RFG. Of particular concern is the potential for any substantial reduction of the quality of RFG in any covered area. The required RFG surveys and resultant ratchets for survey failures are the primary mechanism for correcting or avoiding such a situation. These surveys assess the quality of RFG with respect to both fuel property standards (*i.e.,* oxygen and benzene content) and performance standards (*i.e.,* complex model VOC, toxics and NO_X emissions reductions).

As stated earlier, a specific ratchet is prescribed in the regulations for each type of survey failure, and a failure for a given parameter results in a ratchet of that parameter. In the absence of an oxygen minimum requirement, we believe that ratcheting of the average toxics performance requirement in response to an oxygen survey series failure is appropriate.

The exact role that oxygenates play in RFG toxics emissions performance is difficult to quantify. The complex model indicates that as oxygen content increases while other fuel properties are held constant, the toxics emissions performance of gasoline may increase or decrease, depending on the amount and type of oxygenate and values of other fuel properties. However, the relationship between toxics performance and oxygen in RFG is influenced by other factors. For example, oxygenates are a high octane blending component in RFG. Producing RFG with less oxygen or no oxygen requires adjusting the ''recipe'' to provide an alternate source for the volume and octane which the oxygenate provided.

One potential oxygen/octane replacement strategy is the use of reformate, a blending component which contains high-octane aromatic compounds. Increasing the aromatics content in gasoline increases emissions of toxics air pollutants, and this effect is incorporated into the complex model. We recognize that reducing or eliminating the oxygen content in an RFG recipe would not necessarily result in poorer toxics performance. For example, lost volume and octane content could be made up by increasing the use of alkylates, another potentially available refinery blending stream. Alkylates are a good octane source, and an increase in alkylate content in the recipe would not result in poorer toxics emissions performance. While the complex model does predict that total toxics emissions increase somewhat with oxygen removal, independent of what is used as a replacement, this effect can be offset by relatively small changes in other fuel properties with greater influence on toxics emissions.

However, U.S. refiners have far greater capacity to produce reformate than they do to produce alkylate and, thus, it is likely that the removal of oxygen from RFG batches below the current minimum would tend to result in an upward pressure on the use of aromatics. Therefore, EPA's suggestion to ratchet the toxics performance standard in the event of an oxygen survey series failure, is based on a reasonable expectation that inadequate use of oxygen will generally result in an increase in toxic air emissions. Accordingly, the risk of a more stringent ''ratcheted'' toxics standard would provide incentive to avoid risking an oxygen survey failure.

In summary, removing the oxygen per-gallon minimum would not necessarily lead to average oxygen content deficiencies, or to poorer average toxics emissions performance in any covered area, but the potential for such occurrences exists. Therefore, we are requesting comment on whether ratchets to the average toxics standard in response to oxygen survey failure would be an appropriate mechanism to address this concern.

This toxics ratchet would provide an economic incentive to avoid and correct average oxygen content deficiencies in any covered area, as well as a means to mitigate the possible environmental consequence of such deficiencies. The specific toxics ratchet suggested in the event of an oxygen survey series failure is the same as that currently prescribed for a toxics emissions performance survey series failure—*i.e.,* the complex model toxics emissions reduction requirement for that covered area beginning in the year following the failure is made more stringent by increasing the average toxics emissions reduction standard by an additional 1.0 percent.

The RFG regulations provide enforcement exemptions for Federal RFG sold in California. While most survey requirements do not apply in California, Section 80.81 of the regulations, which addresses these enforcement exemptions, contains a provision for oxygen surveys in Federal RFG areas in California.

We are suggesting that the 1.0% ratchet of the average toxics emissions reduction standard apply, as well, in the event of a California oxygen survey series failure. We are also soliciting comments on possible alternatives to a toxics ratchet.

F. Modification to the Commingling Prohibition

The regulations, in § 80.78(a)(8), currently prohibit the commingling of VOC-controlled RFG oxygenated with ethanol with VOC-controlled RFG produced using any other oxygenate during the period January 1 through September 15. The rationale for this prohibition is the RVP boost associated with ethanol. For example, the RVP resulting from mixing equal volumes of a 7 psi ethanol-oxygenated RFG blend and a 7 psi ether-oxygenated RFG blend would be greater than 7 psi. The RVP resulting from mixing two 7 psi ether-oxygenated RFG blends or two ethanol-oxygenated RFG blends would not be greater than 7 psi.

When an ethanol-oxygenated blend is mixed with an ether-oxygenated blend the commingled blend is likely to have a VOC emissions performance worse than the average of the VOC performance of the two original RFG formulations. Since commingling can reduce the effectiveness of RFG to control VOC emissions, it is prohibited. This RVP boost will also occur when RFG oxygenated with ethanol is mixed with a non-oxygenated gasoline, and removal of the oxygen minimum would produce situations where non-oxygenated RFG is permissible.

[6] 62 FR 37351 (July 11, 1997).

Therefore, in order to prevent reduced VOC control effectiveness, we request comment on whether an elimination of the oxygen minimum should include an extension of the commingling prohibition to combinations of VOC-controlled ethanol-oxygenated RFG with any other VOC-controlled RFG during the January 1 to September 15 time period. We also are soliciting comment on the adequacy of this approach to addressing commingling issues associated with removal of the oxygen minimum.

Based upon discussions EPA has had with refiners and representatives of the ethanol industry, we are considering whether it is advisable to change the dates during which the commingling prohibition is in effect. Under the current regulation, it is in effect from January 1 through September 15. Refiners and ethanol supporters are questioning why the period begins in January and suggest that it begin in April. The prohibition ends on September 15 because that is the end of the ozone season; during the three and a half months after that date, refiners and terminals can clear out the VOC controlled RFG. The prohibition begins in January because we have evidence that some refiners may begin production of VOC controlled RFG as early as January.

We understand that in terms of seasonal switching of RFG (*i.e.,* from wintertime non-VOC controlled RFG to summertime VOC controlled RFG) there is difficulty in product turnover at some terminals and the requirement to segregate VOC controlled RFG from non-VOC controlled RFG may present difficulties. This segregation requirement is not, however, part of the commingling prohibition. Therefore we would like to know what disadvantage the starting date of January 1 represents with respect to the commingling prohibition, as well as what advantages a starting date of April 1 would provide.

G. Effect on Air Toxics

Elimination of the oxygen minimum is likely to have some impact on toxics emissions. The magnitude of the impact is uncertain for a number of reasons. Most fundamentally, there is uncertainty about how, where and to what extent the elimination of the oxygen minimum will result in seasonal trends in oxygen usage. Consequently, it is impossible to predict with any accuracy the overall impact of this potential change on RFG toxics performance. However, it is possible to examine, and to some degree quantify, changes in RFG toxics performance that could occur under certain scenarios.

Some background information is necessary in order to understand the relationship between this rule and toxics emissions. RFG standards include a performance standard for toxics. The complex model calculates total toxics performance by separately calculating performance for five toxic air pollutants; benzene, acetaldehyde, formaldehyde, 1,3 butadiene and polycyclic organic matter (POM), and summing the results. The equations in the model which estimate the various toxics pollutants are a function of multiple fuel parameters, including oxygen. Oxygen is not the most influential parameter on toxics performance. Variations in other parameters, such as benzene, over the range of values that normally occur in RFG have a much greater effect on total toxics emissions. Some of the toxics equations are not oxygenate-specific, while others are. For example, the higher emitter exhaust benzene equation contains a term for oxygen weight percent, and as oxygen content increases, all else being constant, benzene emissions decrease. On the other hand, the formaldehyde equations have a term for oxygen from MTBE only, and as MTBE oxygen increases formaldehyde emissions increase. The acetaldehyde equations include a term for oxygen from ethanol, and as ethanol oxygen increases acetaldehyde emissions increase. The complex model treats all of the constituent toxics equally on a mass basis even though these toxics may have different cancer potencies and pose significantly different cancer risk.

As a result of these complex model characteristics, the model predicts that, as MTBE oxygen increases from zero, all else being constant, total toxics emissions will decrease. The model also predicts that an ethanol-oxygenated gasoline will have higher total toxics emissions than an otherwise identical MTBE-oxygenated gasoline with the same weight percent oxygen. Additionally, as ethanol oxygen increases from zero, all else being constant, total toxics emissions will decrease to a minimum and begin to increase again. However, the total toxics emissions at 3.5% oxygen (approximately 10 volume percent ethanol) would still be lower than the total toxics emissions at zero oxygen.

Consequently, since this rule may facilitate changes in both the type and amount of oxygenate used, there is a potential for some adverse impact on total toxics emissions. In order to get a sense of the magnitude of this impact, we have provided results from several complex model runs where the type and amount of oxygen is varied while other parameters are held constant. All model runs were done with the Phase II complex model, which is applicable beginning in 2000. However, rather than choose a hypothetical ''recipe'' (set of complex model fuel parameters) meeting Phase II requirements, we have fixed the non-oxygen fuel parameters at summer and winter seasonal average levels for Phase I RFG, based on 1998 RFG surveys from areas which used little or no ethanol (the summer season is June 1–September 15 and winter is the rest of the year). In order to provide a single set of numbers for each oxygenate scenario, we have combined summer and winter results from each complex model run using the weights 0.468 for summer and 0.532 for winter. (These are the weights specified in the RFG regulations for calculating annual survey series toxics averages, and suggested for calculation of the annual survey series oxygen averages.) Toxics results from these complex model runs are summarized in the following table:

	MTBE −2% oxygen		Ethanol 3.5% oxygen		Ethanol 0%S/3.5%	% change	WMTBE 1%S/Eth. 3.5%W	
	mg/mi	% change	mg/mi	% change	mg/mi		mg/mi	% change
Exhaust benzene	40.64	−38.82	37.66	−43.31	40.54	−37.93	39.62	−39.65
Nonexhaust benzene	0.76	−32.95	0.83	−31.74	0.83	−31.74	0.80	−32.35
Acetaldehyde	5.35	−9.72	13.74	131.75	10.92	68.33	10.85	66.74
Formaldehyde	14.43	13.22	13.16	3.22	13.16	3.22	13.38	5.47
Butadiene	11.10	−11.79	10.59	−15.89	11.07	−10.71	10.92	−12.30
POM	3.46	−9.89	3.44	−10.38	3.46	−9.86	3.46	−10.01
Total exhaust toxics	74.99	−26.25	78.59	−22.77	79.15	−22.06	78.22	−23.22
Total toxics	75.75	−27.57	79.42	−24.11	79.98	−23.44	79.02	−24.57

The ''MTBE–2% oxygen'' case represents MTBE usage at a 2% by weight oxygen level in both summer and winter. This level of oxygen satisfies the regulatory requirement, and oxygen usage at this level, with little seasonal fluctuation, is typical of Phase I ether-oxygenated RFG. The ''Ethanol 3.5% oxygen'' case represents ethanol usage at a 3.5% by weight oxygen level in both summer and winter. This level of oxygen usage, with little seasonal fluctuation, is typical of ethanol-oxygenated Phase I RFG. The ''Ethanol 0%S/3.5%W'' case represents no oxygen usage during the summer and ethanol usage at 3.5% during the winter. This oxygenate usage pattern could occur, or be approached, if the oxygen minimum requirement were removed. The ''MTBE 1%S/Eth. 3.5%W'' case represents MTBE usage at 1% by weight oxygen during the summer and ethanol usage at 3.5% during the winter. This oxygenate usage pattern could occur if the 1.5% minimum were removed and suppliers elect to use MTBE during the summer. Suppliers who elect to comply with the ''averaged'' oxygen standard must use sufficient oxygen to ensure volume-weighted compliance with this standard. Given the possibility of a toxics ratchet, suppliers are also likely to use sufficient oxygen to avoid survey series failure. If the seasonal weighting factors suggested for calculation of the oxygen survey series average are applied to this case, the annual oxygen level is about 2.3 weight percent, sufficient to provide compliance, with some margin, with the 2.0 percent survey standard. The columns labeled ''mg/mi'' and ''% change'' represent complex model emission estimates in milligrams per mile and as a % change from ''baseline'' emissions, with a negative number indicating a reduction from baseline. All complex model emissions estimates are referenced to 1990 technology vehicles and a statutory baseline fuel ''recipe''. While the parameters for these model runs were derived from Phase I RFG data, all cases complied with the 21.5% reduction Phase II ''averaged'' toxics performance standard. We acknowledge that this analysis does not attempt to account for effects resulting from substituting other blending components to replace the volume and octane lost with oxygenate removal. The intent of this analysis is to illustrate the direct effect of oxygen on complex model toxics emissions and the toxics emission performance issue associated with elimination of the oxygen minimum.

It is apparent from the above table that the ''MTBE–2% oxygen'' case has superior total toxics emissions to any of the other cases. However, on an individual toxics basis the MTBE case is not always superior. Exhaust benzene, formaldehyde and 1,3 butadiene emissions from the other cases are, on a milligram per mile basis, at least slightly lower than comparable emissions from the ''MTBE–2%'' case. The higher total toxics emissions with ethanol blends result primarily from higher acetaldehyde emissions. It should also be noted that the difference in total toxics emissions between the two ethanol cases is substantially smaller than the difference in toxics emissions between the MTBE case and the ''Ethanol 3.5% oxygen'' case. Consequently, the adverse impact, if any, of oxygen minimum elimination on total toxics emissions in a market already using ethanol is likely to be small. A larger adverse toxics impact could occur in a market switching from MTBE to ethanol. However most of this impact would be attributable to the switch in oxygenate type rather than to any change in seasonal oxygen usage. Thus, the incremental ''total toxics'' penalty resulting from the removal of the oxygen minimum is likely to be much less than the ''total toxics'' penalty resulting from a switch from MTBE to ethanol, assuming such a switch were to occur.

In summary, there are air toxics trade-offs associated with changes in oxygenate usage. At this time, the impact of an elimination of the oxygen minimum on oxygenate use and distribution and, hence, toxics emissions performance is uncertain. However, were EPA to implement such a change, the RFG surveys will provide a substantial amount of data to evaluate these impacts. Therefore, we are soliciting comment on the effects that this approach may have on toxic air emissions and, consequently on the benefits or dis-benefits of this approach with respect to air toxics. We also request comment on alternative regulatory approaches, such as lowering, rather than removing the oxygen minimum, which may provide some of the benefits of this regulation while mitigating some adverse impacts.

H. Effect on CO Emissions

Section I of the preamble which addresses the adjusted VOC standard, points out that the ozone impacts of the slight increase in VOC associated with the adjusted standard are likely to be generally offset by the reduction in CO emissions resulting from the higher level of oxygen in the fuel, since CO plays a role in the formation of ozone in the atmosphere. The CO decrease associated with higher oxygen levels raises the question of what the effect might be on air quality if gasoline with zero oxygen is used in the summertime. Specifically, elimination of the oxygen minimum could result in some amount of gasoline with zero oxygen in the summer months, and a relative increase in CO emissions associated with such fuel.

We believe that the unpredictability of ethanol RFG distribution identified in Section I.D and I.H also applies with respect to the distribution of gasoline with zero oxygen during the summer months in any given geographic region. As discussed in I.F, we believe that the increase in VOC emissions resulting from utilization of the adjusted VOC standard cannot be adequately quantified at this time and any increase is likely to be a very small portion of an area's total VOC emissions.

We believe the same to be true with respect to predicting the likelihood of increased CO emissions resulting from the presence of zero-oxygen RFG during the summer months. That is, the increase in CO emissions resulting from zero oxygen RFG during the summer months in any given region cannot be adequately predicted or quantified at this time. We believe that such increases are likely to be a very small portion of an area's total CO emissions and thus would likely have a negligible effect on ambient ozone.

Therefore we request comment on whether EPA should evaluate the need to re-evaluate the distribution of zero oxygen RFG in the summer months at some time after a rulemaking to eliminate the oxygen minimum requirement.

III. Administrative Requirements

A. Executive Order 12866

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

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

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

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

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

The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order because it generally relaxes the requirements of the RFG program by providing regulated parties with more flexibility with respect to compliance with the RFG requirements. Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule 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, as specified in Executive Order 13132. The proposed rule would provide regulatory relief for refiners who choose to make RFG with 10 volume percent ethanol by adjusting the VOC performance standard. As discussed in Section I.H. of the preamble, we believe that the increased VOC associated with the adjusted VOC standard should not affect states' ROP plans in the near term, and does not impose any substantial direct effects on the states. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule does not create a mandate for any tribal governments. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action proposes some changes that would generally relax the Federal RFG requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if

the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule would provide regulatory relief by making the VOC standard for RFG that contains 10 volume percent ethanol slightly less stringent, and by eliminating the oxygen minimum requirement in RFG. These actions will provide more flexibility for refiners to reduce MTBE use by decreasing the cost of ethanol-blended RFG. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted by approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1591.11) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The action will result in revision of the Reformulated Gasoline and Anti-Dumping Batch Report form (EPA Form 3520–20C) that refiners must complete. The form would be revised to include under Item 4.0 a new product type called ''Adjusted VOC gasoline''. This revision does not represent significant new reporting requirements, nor a substantial increase in the amount of time spent filling out the form. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.08). ICR No. 1591.08 will be renewed in July of this year. Upon final promulgation of today's proposal, ICR 1591.11 associated with this rule will be encompassed in the renewed ICR 1591.08.

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. 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.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action proposes changes that would provide regulated parties with more flexibility with respect to compliance with the RFG requirements.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. For reasons stated in Section I.F. of the preamble, we believe that the adjusted VOC standard for RFG with 10 volume percent ethanol will continue to provide a similar level of benefits to those anticipated from the current standard, and will assure that the Phase II RFG program will continue to achieve the significant environmental benefits for which it was designed.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs

EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Reforumlated Gasoline Adjustment Proposal Page 82 of Page 92 Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards, and does not specify the use of technical methods. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Statutory Authority

Sections 114, 211, and 301(a) the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Reformulated gasoline.

Dated: June 30, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, we propose to amend part 80 of title 40, of the Code of Federal Regulations to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.40 is amended by adding paragraph (c) to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) ''Adjusted VOC gasoline'' for purposes of the Product Transfer Document requirements in § 80.77 is gasoline that contains 10 volume percent ethanol for which the less stringent VOC standards in § 80.41 apply.

(2) Refiners may choose not to designate gasoline which contains 10 volume percent ethanol as ''adjusted VOC gasoline'', in which case the more stringent VOC standards in § 80.41 apply.

3. Section 80.41 is amended by revising paragraphs (e) and (f) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(e) *Phase II complex model per-gallon standards.* The Phase II ''complex model'' standards for compliance when achieved on a per-gallon basis are as follows:

PHASE II—COMPLEX MODEL PER-GALLON STANDARDS

VOC emissions performance reduction (percent):	
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 1	26.5
All other gasoline designated for VOC-Control Region 1	27.5
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 2	24.9
All other gasoline designated for VOC-Control Region 2	25.9
Toxic air pollutants emissions performance reduction (percent)	20.0
NOx emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	5.5
Gasoline not designated as VOC-controlled	0.0
Oxygen content (percent, by weight)	2.0
Benzene (percent, by volume)	1.00

(f) *Phase II complex model averaged standards.* The Phase II ''complex model'' standards for compliance when achieved on average are as follows:

PHASE II COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent):	
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 1:	
Standard	28.0
Per-Gallon Minimum	25.0
All other gasoline designated for VOC-Control Region 1:	
Standard	29.0
Per-Gallon Minimum	25.0
Gasoline containing 10 volume % ethanol designated for VOC-Control Region 2:	
Standard	26.4
Per-Gallon Minimum	23.4
All other gasoline designated for VOC-Control Region 2:	
Standard	27.4
Per-Gallon Minimum	23.4
Toxic air pollutants emissions performance reduction (percent)	21.5
NO_X emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	6.8
Gasoline not designated as VOC-controlled	1.5
Oxygen content (percent, by weight):	
Standard	2.1
Per-Gallon Minimum	1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

4. Section 80.67 is amended by revising paragraph (g)(1) and by adding paragraph (h)(4) to read as follows:

§ 80.67 Compliance on average.

* * * * *

(g) * * *

(1)(i)(A) The compliance total using the following formula:

$$\text{COMPLIANCE TOTAL} = \left(\sum_{i=1}^{n} V_i\right) \times \text{std}$$

Where:

V_i=the volume of gasoline batch i

std=the standard for the parameter being evaluated

n=the number of batches of gasoline produced or imported during the averaging period and

(B) For computation of the VOC performance standard compliance total, Std for each VOC control region is determined by the following formula:

$$\text{Std} = \frac{\text{Std}_u \times \sum_{i=1}^{n_u} VU_i + \text{Std}_a \times \sum_{i=1}^{n_a} VA_i}{\sum_{i=1}^{n_u} VU_i + \sum_{i=1}^{n_a} VA_i}$$

Where, for gasoline and RBOB designated for that VOC control region:

Std=the value to be used in the compliance total formula:

Std_u=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB not designated for compliance with the adjusted VOC gasoline standard

Std_a=the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB designated for compliance with the adjusted VOC gasoline standard

VU_i=the volume of batch i not designated for compliance with the adjusted VOC gasoline standard

VA_i=the volume of batch i designated

for compliance with the adjusted VOC gasoline standard

n_u=the number of batches produced or imported and not designated for compliance with the adjusted VOC gasoline standard

n_a=the number of batches produced or imported and designated for compliance with the adjusted VOC gasoline standard and

(C) The actual total using the following formula:

$$\text{ACTUAL TOTAL} = \sum_{i=1}^{n} \left(V_i \times \text{parm}_i \right)$$

Where:

V_i=the volume of gasoline batch i

parm_i=the parameter value of gasoline batch i

n=the number of batches of gasoline produced or imported during the averaging period

(ii) [Reserved]

* * * * *

(h) * * *

(4) In the case of gasoline containing 10 volume percent ethanol oxygen credits may be generated, transferred and used for such gasoline only if it is not identified in the Product Transfer Document per § 80.77(g)(4)(B)(3) as ''adjusted VOC gasoline'' as defined in § 80.40(c).

* * * * *

5. Section 80.68 is amended by revising paragraph (c)(8)(ii)(B) to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

(B) The covered area shall have failed the complex model VOC survey if the VOC emissions reduction percentage average of all survey samples is less than the weighted average of the applicable per-gallon standards for VOC emissions reduction calculated according to the following formula:

$$\text{WSTD} = \frac{\text{VOCU} \times n_u + \text{VOCA} \times n_a}{n}$$

Where:

WSTD=Weighted average of the applicable per-gallon VOC standards

VOCU=Per gallon VOC standard applicable in the covered area to RFG containing less than 10% ethanol by volume

VOCA=Per gallon VOC standard applicable in the covered area to RFG containing 10% ethanol by volume

n_u=Number of samples in the VOC survey with oxygen content less than 3.5% by weight

n_a=Number of samples in the VOC survey with oxygen content equal to or greater than 3.5% by weight

n=Total number of samples in the VOC survey

* * * * *

6. Section 80.69 is amended by revising the introductory paragraph to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

The requirements of this section apply to all reformulated gasoline blendstock for oxygenate blending, or RBOB, to which oxygenate is added at any oxygenate blending facility, except that paragraph (a)(7) of this section does not apply to ''adjusted VOC gasoline'' as defined in § 80.40(c).

* * * * *

7. Section 80.77 is amended by revising paragraph (g)(3) to read as follows:

§ 80.77 Product transfer documentation.

* * * * *

(g) * * *

(3) Identification of VOC-controlled reformulated gasoline including ''adjusted VOC gasoline'' as defined in § 80.40(c), or RBOB as gasoline, or RBOB which does not contain any ethanol, or RBOB which contains less than 10 volume % ethanol, or RBOB which must contain 10 volume % ethanol and is used to make ''adjusted VOC gasoline''.

* * * * *

[FR Doc. 00–17351 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–6734–8]

Ocean Discharge Criteria: Revisions to Ocean Discharge Criteria Regulations; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: This document announces that the Environmental Protection Agency (EPA) is inviting all interested members of the public to participate in any or all of a series of public meetings on its plan for revising the Ocean Discharge Criteria regulations and to solicit public input on the plan. These regulations implement section 403 of the Clean Water Act. The EPA is hosting these meetings in five cities between late July and mid-August 2000.

DATES: See Supplementary information section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: For general information on the meetings, write Marine Pollution Control Branch, ATTN: Ocean Discharge Criteria, US Environmental Protection Agency, MC 4504F, 1200 Pennsylvania Avenue NW, Washington, DC, 20460, or email to: ocean.discharges@epa.gov, or fax to: 202/260–9920. You may also call Macara Lousberg, at telephone 202/260–9109.

SUPPLEMENTARY INFORMATION:

Public Meeting Information

The public meetings will be held on the following dates, times and locations:

1. Tuesday, July 25, 2000, 9 a.m. to 12:00 noon; and 1–4:30 p.m, in Washington, DC—Holiday Inn—National Airport, 2650 Jefferson Davis Highway, Arlington, VA 22202
2. Thursday, July 27, 2000, 1–4:30 p.m. and 7–9 p.m., in Boston, MA—Wyndham Boston Hotel, 89 Broad Street, Boston, MA 02110
3. Tuesday, August 1, 2000, 1–4:30 p.m. and 7–9 p.m., in Portland, OR—Portland Conference Center, (Morrison Room), 300 NE Multnomah Street, Portland, OR 97232
4. Thursday, August 3, 2000, 1–4:30 p.m. and 7–9 p.m., in Los Angeles, CA.—Los Angeles Convention Center, 201 S. Figueroa St., Los Angeles, CA 90015
5. Wednesday, August 9, 2000, 1–4:30 p.m. and 7–9 p.m., in Tampa, FL—Holiday Inn Express—Airport\Stadium, (Lakeside ×4), 4732 N. Dale Mabry Highway, Tampa, FL 33614

Members of the public who plan to attend any of these meetings should write, call, email or fax to the address listed in the **FOR FURTHER INFORMATION CONTACT** section above. Include your name, affiliation, address and phone number, and whether you wish to make a statement. The Agency will use the information to arrange enough time on the agenda for public comment.

Background

On May 26, 2000, President Clinton signed Executive Order 13158 which among other things explicitly directs EPA to take action to better protect marine and coastal areas. Section 4(f) of the Executive Order on Marine Protected Areas states:

To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

EPA believes that revisions to the Ocean Discharge Criteria (also called the section 403 regulations) is the most appropriate approach to implementing the order.

In 1972, Congress passed the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA). Under the CWA, point source discharges (*i.e.,* discharges from municipal and industrial facilities) to waters of the United States must obtain a National Pollutant Discharge Elimination System (NPDES) permit, which requires compliance with technology- and water quality-based treatment standards. In addition, because of the complexity and ecological significance of marine ecosystems, discharges to the marine environment beyond the baseline (*i.e.,* the territorial sea, contiguous zone, and oceans) must also comply with section 403 of the CWA (section 403), which specifically addresses impacts from such point sources on marine resources.

The current Ocean Discharge Criteria regulations consider 10 criteria in evaluating NPDES permits for discharges into marine waters. These criteria emphasize an assessment of the impact of an ocean discharge both on the biological community in the area of the discharge and on surrounding biological communities. The current regulations governing section 403 were issued in 1980. Revising these regulations could potentially impact holders of NPDES permits that discharge into ocean waters and anyone who might apply for such a permit in the future.

EPA is holding these five meetings to present EPA's plans for section 403 regulatory revisions in support of the Executive Order. These meetings will provide the interested public an opportunity to comment on EPA's approach for regulatory revisions and to present data or opinions regarding the impacts of ocean discharges under CWA section 403 on the ocean environment.

These five meetings will provide an opportunity for the interested public to comment on EPA's approach to meeting the requirements of the Executive Order. Specifically, the Agency may reconsider revising the existing scientific standards for protecting coastal and ocean waters under section 403 of the Clean Water Act, and proposing a list of Special Aquatic Sites (SAS's). The Agency's actions may also include strengthening the existing regulations regarding permits to discharge into ocean waters under section 403 of the CWA, including specific protection for SAS's in ocean waters.

Dated: July 7, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 00–17751 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 268 and 271

[FRL–6729–4]

RIN 2050–AE65

Land Disposal Restrictions; Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088) and Regulatory Classification of K088 Vitrification Units

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise certain treatment standards for spent potliners from primary aluminum reduction (EPA hazardous waste: K088) under its Land Disposal Restrictions (LDR) program. These revisions are a direct result of an Agency commitment to investigate whether a more permanent treatment standard for K088 is appropriate. If promulgated, nonwastewaster forms of K088 waste would have to meet a new treatment standard, measured by a version of the Toxicity Characteristic Leaching Procedure (TCLP) that uses deionized water as the leaching fluid. The Agency is also proposing to revise the treatment standards for total and amenable cyanide in K088 nonwastewaters. Finally, the Agency is proposing to classify K088 vitrification units as RCRA Subpart X miscellaneous treatment units. As a final matter, we discuss the appropriateness of extending the rationale and regulatory status applied in this proposed rule for K088-vitrification units to all vitrification units treating RCRA hazardous waste.

DATES: Written and electronic comments must be received on or before September 11, 2000.

ADDRESSES: Commenters should submit an original and two copies of their comments referencing Docket No. F–2000–TSSP–FFFFF to: the RCRA Information Center (RIC), U.S. Environmental Protection Agency Headquarters (5305G), Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Courier deliveries of comments should be submitted to the RIC at the address listed below. Comments may also be submitted electronically through the Internet to: RCRA-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–2000–TSSP–FFFFF. Submit electronic comments as an ASCII file and avoid the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in WordPerfect 6.1 file format.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted separately to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

The Agency will consider the public comments during development of any final rule related to this action. The Agency urges commenters submitting data in support of their views to include data evidence that appropriate quality assurance/quality control (QA/QC) procedures were followed in generating the data. Data that the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing regulatory options for the final rule. For guidance see Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/ Quality Control Procedures and Methodology; USEPA, October 23, 1991.

Public comments and supporting materials are available for viewing in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page.

The docket index and notice are available electronically. See the Supplementary Information section for information on accessing it.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific information, contact Elaine Eby or John Austin, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Elaine Eby may be reached at 703–308–8449, eby.elaine@epamail.epa.gov; and John Austin may be reached at 703–308–0436, austin.john@epamail.epa.gov. For information on the capacity analysis, contact C. Pan Lee (5302W) at 703–308–8478, lee.cpan@epamail.epa.gov. For questions on the regulatory impact analysis, contact Linda Martin (5307W) at 703–605–0768, martin.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type http://www.epa.gov/epaoswer/hazwaste/ldr/index.html.

Affected Entities

Entities potentially affected by this action are generators of spent aluminum potliner from primary aluminum reduction, or entities that treat, store, transport, or dispose of these wastes.

Category	Affected entities
Industry	Generators of the following listed wastes, or entities that treat, store, transport, or dispose of these wastes. K088—Spent potliners from primary aluminum reduction. All RCRA Hazardous Waste—Treated using a vitrification technology.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be affected by this action. This table lists those entities of which EPA now is aware that potentially could be affected by this action. Other entities not listed in the table also could be affected. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the amended rules found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Can I Influence EPA's Thinking on this Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on the items in the following Table.

PRIMARY AREAS UPON WHICH COMMENTS ARE REQUESTED

- The selection of BDAT;
- The proposed treatment standards for cyanide and fluoride;
- The time required before treatment capacity capable of meeting the revised treatment standards will be available;
- The classification of K088 vitrification units as miscellaneous Subpart X treatment units;
- The analytical approach taken to estimate compliance costs and potential economic impacts; and,
- Data to refine the time frame to construct a vitrification unit and commercial pricing of the Vortec technology.

Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

Table of Contents

I. Background

A. How Is K088 Waste Generated?

K088 (spent potliner from primary aluminum reduction as listed in 40 CFR 261.32) is generated by the aluminum manufacturing industry. Aluminum production occurs in four distinct steps: (1) mining of bauxite ores; (2) refining of bauxite to produce alumina (aluminum oxide); (3) reduction of alumina to aluminum metal; and (4) casting of the molten aluminum. Bauxite is refined by dissolving alumina in a molten cryolite bath. Next, alumina is reduced to aluminum metal. This reduction process requires high purity aluminum oxide, carbon, electrical power, and an electrolytic cell. An electric current reduces the alumina to aluminum metal in electrolytic cells, called pots. These pots consist of a steel shell lined with brick with an inner lining of carbon. During pot service, the liner is degraded and broken down. Upon failure of a liner in a pot, the cell is emptied, cooled, and the lining is removed. In 1980, EPA originally listed spent potliners as a RCRA hazardous waste and assigned the hazardous waste code K088. See 45 FR 47832.

B. What Is the Regulatory History of K088 in the LDR Program?

The Phase III—Land Disposal Restrictions Rule (61 FR 15566, April 8, 1996) prohibited the land disposal of K088 spent potliner unless the waste satisfies the section 3004(m) treatment standard established in the same rulemaking. The Phase III rule established treatment standards, expressed as numerical concentration limits, for various regulated constituents in the waste—25 in all, with standards for both wastewaters and nonwastewaters. These constituents included cyanide, fluoride, toxic metals (including arsenic), and a group of organic compounds called polycyclic aromatic hydrocarbons (PAHs).

With the exception of fluoride, the treatment standard limits established for K088 were equivalent to the universal treatment standards. See 61 FR 15585; see also 40 CFR 268.48 (Universal Treatment Standards Table). The fluoride standard was based generally on data submitted in a delisting petition for K088 waste from the Reynolds Metals Company. These data were generated from the operation of Reynold's proprietary treatment process for spent potliners.

In the Phase III rule, the Agency granted a nine-month national capacity variance pursuant to section 3004(h)(2) to allow facilities generating K088 adequate time to work out treatment and disposal logistics. See 61 FR 15589. Subsequent developments then took an unexpected turn. Unanticipated performance problems in the Reynolds treatment process resulted in treatment residues whose actual leachate (as measured in the landfill leachate collection system at the company's disposal site) contained markedly higher concentrations of arsenic and fluoride than predicted by the Toxicity Characteristic Leaching Procedure (TCLP), the analytical test used to measure performance of the treatment technology for certain hazardous constituents in K088. Two of the 22 regulated constituents of concern, namely, arsenic and fluoride were significantly more soluble in highly alkaline conditions (the actual disposal environment of the landfill Reynolds was using for disposal) than acidic conditions (the situation modeled by the TCLP). 62 FR 1992, 1993 (January 14, 1997). In addition, the company was disposing of the treatment residues in non-subtitle C units.

EPA concluded that further time was needed to evaluate whether adequate protective treatment capacity was available (within the meaning of RCRA section 3004(h)(2)), and, as part of this determination, whether Reynold's practices in fact satisfied the mandate of section 3004(m) that threats posed by land disposal of the hazardous waste be minimized through treatment. Until these questions were answered and a finding of sufficient protective treatment capacity made, EPA determined that insufficient treatment capacity existed for K088 waste because Reynolds, at the time, was the only available commercial treatment facility for spent potliners. Consequently, on January 14, 1997, we extended the existing national capacity variance, and postponed implementing the land disposal prohibition for an additional six months to be able to study the efficacy of the Reynolds treatment process and the resulting leachate. See generally 62 FR 1992.

In July 1997, EPA, after further study and negotiation with affected parties, announced that Reynolds treatment does reduce the overall toxicity associated with the waste, and, by virtue of an Enforcement Order, that disposal of treatment residues would occur only in units meeting subtitle C standards. This was an improvement over the disposal of untreated spent potliner and provided protective treatment capacity. See 62 FR 37696 (July 14, 1997). On October 8, 1997, the national capacity extension ended and the prohibition on land disposal of untreated spent potliner took effect.

C. How Has Past Litigation Affected K088 Treatment Standards?

Petitions for judicial review of the Phase III rule and the January 1997 and July 1997 rules were filed by Columbia Falls Aluminum Company and other aluminum producers from the Pacific Northwest. The petitioners argued among other things that the use of the Toxicity Characteristic Leaching Procedure (TCLP) did not accurately predict the leaching of waste constituents, particularly arsenic and fluoride, to the environment and that it was therefore arbitrary to measure compliance with the treatment standard using this test. The United States Court of Appeals for the District of Columbia Circuit decided on April 3, 1998, that EPA's use of the TCLP as a basis for setting treatment standards for K088 was arbitrary and capricious for those constituents for which the TCLP demonstratively and significantly under-predicted the amount of the constituent that would leach (139 F.3d 914; see also 63 FR 28571, May 26, 1998 (EPA's interpretation of the Court's opinion)). The Court vacated all the K088 treatment standards and the prohibition on land disposal even though only two of the 54 hazardous constituents for which EPA established treatment standards, namely arsenic and fluoride nonwastewaters, were implicated and despite the Court's expressed statement that its decision did not affect the viability of the concentration limits established for other constituents (139 F.3d at 923–24). In its decision, the Court specifically invited EPA to file a motion to delay issuance of the mandate in this case for a reasonable time in order to develop a replacement standard. *Id.*

On May 18, 1998, we filed a motion with the Court to stay its mandate for four months while we promulgated a replacement prohibition and accompanying treatment standards. The Court granted this motion, indicating that its mandate would not become effective before September 24, 1998. On September 21, 1998, we promulgated interim replacement standards for K088 waste.[1] (See 63 FR 51254, September 24,

[1] The following wastewater and nonwastewater standards were promulgated in this rule: acenapthene, anthracene, benz(a)anthracene, benzo(a) pyrene, benzo(a)fluoranthene, benzo(b)fluoranthene, benzo(g,h,i)perylene,

Continued

1998). We did not, however, replace the treatment standard for fluoride, one of the two constituents for which the TCLP markedly under predicted its leaching potential in treated K088. We determined that significant technical effort would be needed to develop a replacement treatment standard for this constituent—a task that could not be achieved by the D.C. Circuit's deadline of September 24, 1998.[2] We did commit, however, to investigating and if appropriate developing a more permanent treatment standard for K088—an effort we expected to be completed within two years. We stated that a new treatment standard for spent potliners (K088) would hopefully be based on the performance of a treatment technology that resulted in the immobilization of arsenic and fluoride, as well as the other toxic metals in the waste. At that time, we were aware of numerous technologies that showed promise for the treatment of K088 waste, a number of which we viewed as close to being commercially available. We stated that more information was needed to characterize the performance of these technologies, as well as to assess their safety and (in some cases) the safety of the hazardous waste-derived products which may be generated as part of these treatment processes. Chemical Waste Management, 976 F.2d at 17 (treatment technologies whose air emissions are not adequately controlled are not treating in conformance with requirements of section 3004(m)).

D. Today's Proposal

This brings us to today's proposal. Over the last 18 months we have gathered additional data and information on treatment technologies that may be evaluated as the basis for a permanent treatment standard for K088 waste. We have investigated technologies such as vitrification, gasification, and alkaline chlorination, among others. Our emphasis has been on the overall environmental benefits of these technologies including, of course, the performance of these technologies on the treatment of cyanide as well as the two constituents of special concern to the Court, namely arsenic and fluoride. Concurrent with this analysis we have evaluated various analytical methods for measuring fluoride and arsenic concentrations in K088 waste. We have also considered several regulatory implementation approaches for K088 vitrification units and appropriate emission controls for these units.

As a result of these efforts, we are proposing a four-part regulatory strategy for K088 treatment—a strategy that provides environmental protection, but also flexibility with regard to regulatory compliance. The four basic components being discussed in today's proposal include: (1) Revised treatment standards for cyanide and fluoride in K088 nonwastewaters; (2) regulation of K088 vitrification units as RCRA Subpart X miscellaneous treatment units; (3) required air controls on K088 vitrification units; and (4) regulatory status of the outputs of K088-vitrification units.[3] Today's preamble is structured to address each of these components individually and in the order that they have been presented here.

II. Proposed Revisions to K088 Treatment Standards

In this section we discuss proposed revisions to the treatment standards for fluoride, total cyanide, and amenable cyanide in K088 nonwastewaters. We discuss the analytical method proposed to measure compliance with the proposed fluoride treatment standard for K088 nonwastewaters, the identification of treatment processes and performance data for K088, the determination of Best Demonstrated Available Technology or BDAT, and today's proposed treatment standards.

A. Why Is EPA Proposing Changes for Cyanide and Fluoride in K088?

The September 21, 1998 interim final rule committed EPA to the development of a more permanent treatment standard for K088 waste. Cyanide and fluoride were two of the hazardous constituents for which treatment standard development had previously proved problematic. K088 waste contains extremely high concentrations of these constituents, much higher than any of the other regulated constituents in the waste.[4] Furthermore, spent potliners are listed as a hazardous waste because of high concentrations and large amounts of toxic cyanide. See 40 CFR Part 261, Appendix VII (basis for listing K088); 62 FR 37696.[5] Concentrations of cyanide have been found in untreated potliners as high as 5800 mg/kg. Past land disposal of these wastes have resulted in cyanide groundwater contamination. Indeed, EPA has stated repeatedly (and reiterates here) that control of cyanide is the most important objective of the K088 treatment standard, given cyanide's toxicity, concentration in these wastes, and potential to migrate from these wastes in high concentration, as shown by the historic damage incidents. See, e.g., 63 FR 51256; 51261.

K088 also contains high concentrations of fluoride. Often concentrations of fluoride in untreated potliner are greater than ten percent and some data suggest that untreated potliner may have concentrations of fluoride at greater than 20 percent. Most of this fluoride is in the form of soluble sodium fluoride. Unless this fluoride is recovered or effectively immobilized, the high concentrations of soluble fluoride found in K088 have significant potential to contaminate surface water and ground water and cause significant adverse effects to human health and the environment.

New performance data collected as part of developing this proposed rule show that the cyanide present in K088 waste can be readily treated to levels far below the current treatment standard using a vitrification process. These data also show that fluoride can be recovered and reused within the aluminum

chrysene, dibenzo(a,h)anthacene, fluoranthene, indeno(1,2,3-cd)pyrene, phenanthrene, pyrene, antimony, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, and cyanide. The nonwastewater treatment standards for cyanide and the above-listed organic constituents, and all of the standards for wastewaters, are based on a total composition concentration analysis. The nonwastewater treatment standards for the metal constituents are based on analysis using the Toxicity Characteristic Leaching Procedure (TCLP). The interim treatment standard for arsenic nonwastewaters was set at 26.1 mg/kg total arsenic (mineral acid soluble).

[2] We determined that, as a practical matter the requirements of the other metal treatment standards for K088 would result in some immobilization of fluoride as well, and that looking at the totality of additional environmental protection gained from the interim replacement standards for the suite of hazardous constituents involved, in lieu of the land disposal of untreated K088 waste, would constitute the best practical approach to minimizing threats to human health and the environment (even without a fluoride treatment standard). EPA did commit to additional study of fluoride treatment as part of the longer-term effort to establish more permanent treatment standards for K088 waste.

[3] We note that although much the discussion in today's notice is in the context of how to regulate K088 vitrification units, the rationale for regarding these units as Subpart X miscellaneous treatment units would logically extend to all vitrification units treating various hazardous wastes. Thus, all vitrification units, whether direct-fired or indirectly heated and irrespective of the waste treated or recycled, would be classified as Subpart X treatment units. The Agency solicits your comments on the extension of this approach to all vitrification units treating hazardous waste.

[4] As an example, the concentrations of cyanide and fluoride in K088 waste from the Ormet Primary Aluminum facility in Hannibal, Ohio averaged approximately 700 mg/kg and 60,000 mg/kg respectively. All other regulated constituents measured well below the LDR treatment standards in the treated waste. See also, *Proposed Best Demonstrated Available Technology (BDAT) Background Document for Spent Aluminum Potliners—K088,*USEPA, December 1999.

[5] *See also* 60 FR 11702, 11723 n. 11 (Mar. 2, 1995) (notice of proposed treatment standards emphasizing the importance of destroying cyanide and PAHs).

reduction process as well as sold as product to other industrial sectors. See Chemical Waste Management v. EPA, 976 F.2d 2, 27 (D.C. Cir. 1992) (remanding treatment standards as failing to minimize threats when more aggressive treatment was demonstrated to exist). Accordingly, we are proposing to amend to current cyanide treatment standards based on this new performance data as well as proposing a new treatment standard for fluoride nonwastewaters that will encourage fluoride recycling and reuse.

B. What Analytical Methods Were Used to Measure Cyanide and Fluoride Concentrations In K088 Waste?

The proposed treatment standards for both total and amenable cyanides in nonwastewaters are based upon analysis using Method 9010 or 9012, found in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11. These analyses require a sample size of 10 grams and a distillation time of one hour and 15 minutes. This is the analytical method already required for cyanide in all the existing treatment standards.

Today's notice also proposes the use of a revised test for analyzing fluoride in K088 nonwastewaters. This test uses a version of the Toxicity Characteristic Leaching Procedure (TCLP) that uses deionized water as the leaching fluid (ASTM Method D3987–85 (1999)). The prior treatment standard for fluoride was based on TCLP analysis following treatment that converted the fluoride present in untreated K088 waste to generally insoluble calcium fluoride. (See 61 FR 15584, April 8, 1996.) However, the solubility of calcium fluoride is a function of pH. Because the TCLP tests use a simulated leachate with enough buffering capacity to lower the leachate pH to more acidic conditions, the calcium fluoride would be substantially less soluble than would be the case under actual field conditions. At the more acidic pH of the TCLP test, fluoride concentrations in treated waste were measured at less than 48 mg/L TCLP (the old treatment standard promulgated in the Phase III rule, 61 FR 15584, April 8, 1996), while measured concentrations in actual alkaline landfill leachate can be much higher, approximately 2200 mg/L. Had the original Phase III test been performed using de-ionized water as the leachate fluid, we expect that test results would have more closely tracked with the actual field measurement because the simulated leachate used in testing would not be buffered.

More recent leachate test results support this hypothesis. Fluoride results using deionized water leach ranged from 730–940 mg/L in the December 6, 1996, Special Laboratory Report, from Reynolds Metals Company. Actual leachate results from ''landfill—cell 1'' in which these wastes were placed have ranged from 664 to 1120 mg/L (April 1998 to August 1999), although values of approximately 2200 mg/L were initially observed from cell 1.

Testing of fluoride concentrations in K088 nonwastewaters, using a version of the TCLP with de-ionized water as the leachate fluid (ASTM Method D3987–85 (1999)), appears to be a workable solution to the pH-fluoride solubility concerns and a suitable measure of treatment performance. With de-ionized water as the leachate test fluid, leachate pH is controlled by the physical properties of the waste (and not the artificial buffering capacity of the test fluid), and more closely correlates with monofill conditions.

In developing this proposal, we also considered whether to conduct leach testing under more aggressive conditions, such as the very alkaline conditions (pH >12) that have been observed at the Gum Springs facility. Ultimately, the lack of a broadly-accepted test method, the variability of site conditions, concerns about transferability of results to other wastes or sites, and time constraints led us to reject this approach for developing today's proposal. We also evaluated the potential of a column-based test, although acceptable for rulemaking development, would not facilitate rapid assessment of compliance after promulgation of the standard. This was seen as a significant drawback not only for EPA, but for regulated entities as well, since column tests normally require weeks to conduct, and most treatment facilities lack multi-week storage capacity for treatment residues. Also, basing standards on alkaline leach or column-based testing conditions would entail the development and proposal of a new analytical procedure whereas the deionized water leach test has been fully vetted.[6] As such, we have collected performance data on K088 treatment using the alternative analytical method being proposed today.

[6] The development and proposal of a new analytical procedure would raise concerns related to the goals of the National Technology Transfer and Advancement Act of 1995. See today's preamble discussion under *National Technology Transfer and Advancement Act* for a further discussion.

C. How Are Treatment Standards Developed?

In the Land Disposal Restrictions (LDR) program, two types of treatment standards have been established by EPA: (1) numerical concentration-based treatment limits for each regulated constituent of concern; and (2) methods of treatment that must be used to treat a particular constituent or constituents(s). In either case, the treatment standard is based on a technology determined to be the ''Best Demonstrated Available Technology'' or BDAT. The BDAT determination consists of four steps: The first step is the identification of all possible technologies that, in theory, can treat a particular waste. The second step involves a determination of which of these technologies are demonstrated, defined as available on a full-scale basis.[7] Third, from the list of demonstrated technologies, we determine which are available, i.e., those which can be purchased and provide substantial treatment. Finally, available technologies are evaluated based on their treatment performance. EPA typically calculates numerical treatment standards or establishes a method of treatment based on the performance of that technology (or sometimes technologies) shown to perform best on a waste or waste constituent.

However, when evaluating any hazardous waste treatment process, we keep in mind other important environmental objectives. Consequently, within the LDR program and more specifically the BDAT process, a hierarchy of preferred options exists for evaluating treatment and recycling technologies. This hierarchy is part of a broader waste management goal to promote source reduction that is less or no production of hazardous waste, and recycling or reuse (i.e, all the waste generated is used as a feedstock in the same process or another process.) Next, in descending order of preference, are options for hazardous waste management and the establishment of LDR treatment standards. First, are treatment technologies that recover chemical value from the waste for reuse. This option may result in some residuals needing to be land disposed but the preferred techniques would also significantly reduce the quantity and toxicity of any waste destined for land disposal. Further down the hierarchy are treatment technologies that reduce the quantity and toxicity *without*

[7] Bench or pilot scale data may be considered if the full-scale technology is nevertheless in use or commercially available.

recovery of materials for reuse. Finally, at the lowest rung, are treatment technologies that only lower toxicity or the potential for migration. These may even increase the volume of materials for land disposal, e.g., metals stabilization.

If a treatment technology treats hazardous constituents, recovers chemical value from the waste, and meets our BDAT criteria, it will typically be our preference when establishing LDR standards. Treatment standards based on ''treatment/recovery'' are developed in one of two ways by: (1) establishing a required method of treatment, e.g. ''lead recovery or RLEAD''; or (2) establishing numerical concentrations levels based on hazardous constituent concentrations in the recycling (i.e., treatment) residue. Presently, there are 14 waste codes that directly require or include recycling as their treatment standard. See 40 CFR 268.40. We recognize, however, that not all hazardous waste within a specific waste listing may be recyclable. Generally, that is why we establish concentration-based numerical standards instead of requiring mandatory recycling of a particular constituent. Although numerical standards can be based on a recycling technology, any technology (other than prohibited technologies) can be used to meet the treatment standard. In general, this type of approach meets our LDR goal of encouraging environmentally sound recycling at the same time providing the regulated community with flexibility in meeting the treatment standards.[8]

We have identified a range of treatment and recycling practices as applicable to K088 waste. Most of these processes, however, are still under development and are not full-scale operating units so they cannot be the basis of BDAT. What we find encouraging however, is that all of the processes being investigated are recovery or recycling-based. Many of these processes recover reusable chemical value from the spent potliner from either the fluoride or the unburned carbon contained in the waste. Some of these technologies also claim to process the K088 into marketable products. We are encouraged by the prospect of K088 management with some of these alternative processes. However, at the present time and for purposes of this proposal, we are only in a position to evaluate the three existent facilities known to be treating K088 waste.

The Reynolds Metals Company facility in Gum Springs, Arkansas, the Ormet Primary Aluminum facility in Hannibal, Ohio, and the Chemical Waste Management of the Northwest, Incorporated facility in Arlington, Oregon (herein referred to as Reynolds, Ormet, and CWMNW respectively) presently operate the three treatment facilities for K088 waste in the U.S. All three of these facilities maintain full-scale treatment operations and currently meet all the existing treatment standards for K088 waste found in § 268.40. Reynolds and CWMNW operate commercial treatment operations, while Ormet operates a private on-site treatment facility not involved in the commercial treatment of K088. All three of these treatment units are considered available as defined by our BDAT methodology and have had their treatment performance data evaluated for establishment of treatment standards for fluoride, cyanide and arsenic.[9]

D. Our Analysis of Performance Data and BDAT Determination

In 1999, we collected and analyzed treatment performance data from Ormet. We also reviewed performance data submitted by CWMNW. We compared these data to existing performance data from Reynolds. Our analysis shows that the Vortec technology, used at the Ormet facility, provides highly effective treatment of cyanide in addition to being a highly effective *recovery* process for fluoride. Furthermore, the process has also been shown to be effective in the immobilization of residual fluoride.

Conversely, Reynolds and CWMNW operate treatment only facilities for K088 waste. They do not recycle or recover the fluoride value in the waste. Reynolds and CWMNW performance data show that both treatment processes are less effective than Ormet in the destruction of cyanide and the immobilization of residual fluoride.

TABLE 1.—COMPARISON OF AVERAGE CONCENTRATIONS OF CYANIDE AND FLUORIDE IN ORMET, REYNOLDS, AND CWMNW UNTREATED AND TREATED POTLINERS[10]

Facility	Untreated cyanide (mg/kg)	Treated cyanide (mg/kg)	Untreated fluoride (mg/kg)	Treated fluoride (mg/kg)	Treated leachable fluoride (mg/L)
Ormet	670	<0.5	62,775	38.5	2.15
Reynolds	2,770	77	81,100	44,700	552
CWMNW[11]	CBI	CBI	CBI	CBI	CBI

As shown in Table 1, data from the Ormet treatment/recovery process showed cyanide concentrations in the treated potliner measuring below detectable limits (<0.5 mg/kg). This comports with a greater than 99.9% destruction of the cyanide. Conversely, treatment performance data from Reynolds showed untreated potliners with an average cyanide concentration of 77 mg/kg (92–94% total destruction of cyanide).[12] Data from CWMNW showed treatment of the cyanide below the current treatment standard of 590 mg/kg, but well above the average performance concentrations achieved by Ormet.

The Ormet process also removes and recovers from the untreated potliner approximately 99.9% total fluoride. Residual concentrations of fluoride in the treated potliner averaged 38.5 mg/kg total fluoride. Leachable fluoride

[8] The Agency would like to reiterate here that although we have proposed promulgating numerical treatment standards for K088 waste, EPA is aware of only one privately-owned facility that can meet the standards being proposed today. The vitrification technology that has formed the basis of the proposed standards does however meet all the criteria necessary for developing BDAT as identified in 51 FR 40588, November 7, 1986.

[9] As previously discussed, the determination of BDAT is a four-step process. When the Agency determines that a treatment is available, it must be available for purchase if the technology is patented or proprietary and it must provide substantial treatment. Ormet operates a private treatment unit which was purchased from the Vortec Corporation. This technology can be purchased, and as discussed in the following sections data indicate that substantial treatment of K088 occurs.

[10] Amenable concentrations of cyanide in the Ormet untreated and treated potliner averaged 322 mg/kg and <0.5 mg/kg respectively. No average amenable cyanide concentrations were reported by Reynolds.

concentration in the treated potliner averaged 2.15 mg/L total fluoride.[13] Conversely, fluoride concentrations in the treated potliner from Reynolds' averaged 44,700 mg/kg with leachate values averaging 552 mg/kg.

As such, we have initially determined Ormet's treatment process as BDAT for fluoride and cyanide in K088 waste.[14] Ormet's performance data show cyanide destruction values exceeding those obtained by both Reynolds and CWMNW. Furthermore, Ormet's ability to recovery fluoride values for the untreated potliner, coupled with effective immobilization of the residual fluoride in the treated potliner, indicate a treatment process superior to Reynolds and CWMNW.

While the data strongly support this BDAT determination, it is imperative, however, that we discuss here, the issue of ''most-difficult-to-treat'' waste. In the LDR program, we generally prefer to establish a treatment standard based on a waste that we determine to be the most difficult to treat. We usually consider the ''most-difficult-to-treat'' waste, as being the waste with the highest constituent concentration(s) of concern. It is therefore assumed that if a treatment technology can treat a highly concentrated waste, then it can also treat lower concentrations with equal effectiveness. However, we have encountered cases where data and information on different treatment technologies is limited in scope and does not represent the most difficult to treat waste. In these situations, our engineering judgment has played a crucial role in supporting the BDAT determination.

Today's rule is such a case. As mentioned earlier, Ormet is a privately-owned K088 treatment facility. It does not commercially treat K088 waste (although the treatment technology it uses is commercially available, as explained earlier). Because of this, the treatment performance data that we gathered at the Ormet facility reflects the treatment of only one type of K088 waste—Ormet's. Reynolds, the largest commercial treater of K088 waste treats K088 from more than 15 aluminum reduction facilities and has a much broader concentration range of K088 regulated constituents. As indicated by Table 1, the average concentration of cyanide in Ormet's untreated potliner was well below the average concentration of cyanide in Reynold's untreated potliner (670 mg/kg versus 2,770 mg/kg). Based on this information, one might be tempted to conclude that Ormet's waste is not the most difficult to treat for cyanide. However, based on an extensive engineering review of the process at Ormet, and our findings that the treatment unit is well-designed and operated and has a robust combination of time, temperature and mixing within the unit, we are confident that higher concentrations of cyanide, (such as those encountered by Reynolds) will be easily destroyed by this process.[15] Furthermore, we have determined that the Ormet process is matrix independent for cyanide and capable of destroying any concentration of cyanide contained in a K088 waste to below the detection limit. Therefore, we believe that the treatment standards being proposed today for both total and amenable cyanide are appropriate.

Similarly, the average concentration of total fluoride in the Reynolds untreated potliner was 81,000 mg/kg, exceeding the average concentration in Ormet's waste of 62,775 mg/kg. However, we conclude, for similar engineering reasons, that the process employed at Ormet is capable of providing effective recovery and immobilization of fluoride independent of the concentration of fluoride contained in the untreated K088 waste. That is, virtually all of the fluoride will partition to the vitrification baghouse dust, and is then recoverable. The remainder of the fluoride will be immobilized in the treatment residue.

EPA notes that the proposed standard for cyanide would no longer be the universal treatment standard (UTS). The UTS is normally our preferred option, but here the improved cyanide treatment performance from vitrification of K088 (over two and one-half orders of magnitude) is striking. In addition, the Ormet vitrification process appears to optimize recovery/treatment of fluoride, so that improved treatment of both cyanide and fluoride will go together. The proposed treatment standards thus reflect both of these linked treatment improvements. The Agency requests comment as to whether the assumptions made in this ''difficult to treat'' determination are valid and our conclusions are correct. Additional discussion on this matter can be found in the technical background document supporting this proposed rulemaking and is available in the docket.

E. How Does The Treatment Work?

The K088 treatment technology used at Ormet can be generally described as a direct-fired vitrification system that destroys cyanide, while recovering fluoride for reuse. In this treatment, the K088 along with other additives are mixed together and then vitrified to form a residue or glass-like ''frit,'' while effectively partitioning the fluoride for reuse. The fluoride that does not partition is immobilized within the frit.

The unit performing this operation is referred to as a combustion melting system (CMS ™) which was licensed by Ormet from the Vortec Corporation. The CMS ™ consists of a Counter Rotating Vortex (CRV) reactor, a cyclone melter, and a separator/reservoir. The process involves the rapid suspension heating of finely crushed K088 waste, sand, and limestone in a preheater prior to physical and chemical melting that occurs within a cyclone reactor. The reactor is a refractory-lined, water-cooled, carbon steel vessel. Natural gas and preheated air are used to achieve temperatures of approximately 2400° F in the reactor. Materials begin to melt in the reactor and flow downward to the cyclone melter. Melting of the waste and other additives, as well as the combustion of the cyanide and other organics, is completed in this vessel and the resultant molten glass is separated from the combustion gas. The molten glass is dropped into a water quench tank where it solidifies into a frit.

The separated combustion gas is used to preheat the air entering the reactor, and is then sent to a baghouse to remove sodium fluoride (this residue is referred to as the primary baghouse dust). Arsenic, if present, would likewise partition to the baghouse because of its high volatility. The exhaust from the baghouse is then transferred into the potroom dry scrubber system, which is a baghouse air pollution control device using alumina to dry scrub fluoride from aluminum reduction pot exhaust gases. Here, gaseous fluoride is removed and additional particulate removal occurs. The material from the dry scrubber system (referred to as secondary baghouse dust) is fluoride-enriched alumina material that is also reused.

[11] The K088 performance data from Chemical Waste Management of the Northwest, Inc. has been claimed confidential business information. The reader is referred to the background document supporting this proposal for additional information.

[12] The percent destruction of cyanide by the Reynolds process was calculated using data found in Table 3–1 of the ''Proposed Best Demonstrated Available Technology (BDAT) Background Document for Spent Aluminum Potliners—K088''.

[15] The Agency has also concluded that in addition to the destruction of cyanide, polycyclic aromatic hydrocarbons (PAHs) will also be destroyed in this process, independent of their initial concentration in the untreated potliner. See the technical background document for this proposed rule for additional discussion on the technical engineering analysis used to make this determination.

F. Calculation of the Proposed Treatment Standards for Cyanide and Fluoride

Based on an analysis of the entire treatment process, the Agency concludes that the revised treatment standards for fluoride and cyanide will be derived from the concentrations of these constituents as measured in the treated potliner or glass frit. We do so for two reasons. First, the baghouse dust is fluoride-rich material that can be sold as a product or recycled back into the aluminum reduction pots as an electrolyte. Second, the glass frit is the primary residual from the treatment of K088 and will likely be land disposed at some point either after its use as a product or immediately if the glass frit market cannot sustain all the frit that is generated.[16]

EPA took four samples of the frit and analyzed them for total cyanide, amenable cyanide and fluoride. The data for total cyanide in the glass frit consisted of 4 data points all of which measured total cyanide concentrations at below detectable levels (<0.5 mg/kg). Based on these data, a treatment standard of 1.3 mg/kg for total cyanide was calculated. The data for amenable cyanide also included four data points all of which measured below detectable levels (<0.5 mg/kg) in the frit. Based on these data, a treatment standard of 1.4 mg/kg for amenable cyanide was calculated. The difference results from differing recovery factors in the two calculations.

Data was also collected on the leachability of fluoride in the glass frit using the deionized water leach test (ASTM Method D3987–85(1999)). The leach test is a measure of the immobility of the fluoride in the treated matrix. Data results as measured on the frit were: 1.9, 2.3, 1.9, and 2.5 (mg/L).[17] Based on these data, a treatment standard of 2.7 mg/L fluoride was calculated.

To resolve the compliance problem that would result from having a total cyanide value less than the amenable cyanide value, we propose that both total and amenable cyanide have the same compliance values. Therefore, EPA is today proposing revised treatment standards of 1.4 mg/kg total cyanide and 1.4 mg/kg amenable cyanide for K088 nonwastewaters. We are also proposing a new treatment standard for fluoride in K088 nonwastewaters, 2.7 mg/L fluoride, when measured by a version of the Toxicity Characteristic Leaching Procedure with deionized water as the leaching fluid (ASTM Method D3987–85 (1999)). It should be noted that we are *not* proposing to revise any of the other treatment standards for K088 waste found in 40 CFR 268.48.

The numerical treatment standards proposed in today's notice are performance standards reflecting the levels achieved by the BDAT. We emphasize that we are not proposing to require the use of any particular treatment technology. Any technology or combination of technologies not otherwise prohibited (*i.e.*, impermissible dilution) can be used to achieve these standards.[18] The establishment of concentration-based treatment standard provides the regulated community with the greatest amount of flexibility in meeting the treatment standards.

Evaluation of the performance data from Reynolds and CWMNW show that these treatment processes cannot generally achieve the proposed treatment standards which, in practical terms, means that existing treatment technologies that do not recover and substantially immobilize fluoride will need to be modified or replaced. See ''Best Demonstrated Available Technology (BDAT) Background Document for Spent Aluminum Potliners—K088'' for additional discussion. However, as previously mentioned, we are aware of several promising technologies being developed for K088—all of which recover fluoride. Preliminary information further suggest that these technologies would be successful in meeting the treatment standards being proposed today. We request any data and information on any developing technologies currently being investigated by the primary aluminum industry or other for the treatments of K088 waste. Furthermore, we solicit your comments on the achievability of these proposed treatment standards as well as EPA's assumptions regarding the technical and economic feasibility of recycling the fluoride dust.

During the development of this proposal, we did consider several other regulatory options in lieu of the treatment standards being proposed today. One option we considered was the development of a separate treatability group and treatment standard for ''Baghouse Dust from K088 Vitrification Processes—No Land Disposal Based On Recycling.'' This option was explored because clarification might be needed as to the management of the dust, i.e., no land disposal. We determined, however, that the addition of a second, separate standard for K088 baghouse dust had no practical advantage over the proposed standard and rejected this option for two reasons: (1) The baghouse dust is a high quality product that can be recycled within the aluminum industry or other industrial processes; and (2) the proposed treatment standard of 2.7 mg/L *cannot* be met by the baghouse dust and, therefore, for all practical purposes, it must be recycled.[19]

We also considered a ''Fluoride Recycling plus 268.48 Standards'' requirement for all of K088 waste. This option would *require* some type of fluoride recycling to occur in addition to treatment to meet the concentration-based treatment standards (both existing and proposed). The option we are proposing already effectively provides this result since the baghouse dust would not meet the numerical standards if land disposed, and thus its recycling is essentially compelled.

G. Why Isn't the Agency Proposing to Revise the Treatment Standard for Arsenic in K088?

During the development of the revised treatment standards for cyanide and fluoride, we also evaluated the possibility of revising the nonwastewater treatment standard for arsenic. The current treatment standard for arsenic in K088 nonwastewaters is 26.1 mg/kg total arsenic. The development of a revised arsenic treatment standard in this proposal proved problematic for two reasons. First, Ormet's untreated potliners have extremely low concentrations of arsenic, measuring between 3.1 and 4.0 mg/kg, and therefore could not be considered ''most-difficult to treat'' for BDAT purposes.[20] Second, performance data

[16] As a condition of their recycling exemption from the State of Ohio Ormet Primary Aluminum must recycle the glass frit. It is reasonable to expect however, that if additional vitrification units are constructed and brought on-line or if the Ormet unit is permitted as a miscellaneous Subpart X unit, an excess of glass frit may occur, resulting in the land disposal of this material.

[17] Confirmatory experimental data collected by the Agency on June 15, 1999 show that leachate concentrations of the fluoride when tested in a pH range of 11.5–12.5 are 1.8, 2.1, 2.0, and 2.1 mg/L. These data suggest that the residual fluoride that remains in the glass frit is immobilized at an alkaline pH range from 8 (the pH at which the deionized water leach test was conducted) to 12.5.

[18] Of course, dilution of the waste as a means to comply with the standard is prohibited. Also wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment.

[19] If for some reason, the baghouse dust cannot be recycled, the generator may petition the Agency for a treatability variance as outlined in § 268.44.

[20] Performance data from the Ormet facility show that arsenic concentrations in the treated potliner (*i.e.*, glass frit) measured below detectable limits (<2mg/kg) in all samples analyzed. See ''Proposed Best Demonstrated Available Technology(BDAT) Background Document for Spent Aluminum

from the Ormet process indicates that arsenic is not immobilized in the treated potliner.[21] Rather it partitions (because of its high volatility) to the baghouse dust, which is then be recycled back into the aluminum reduction pots or sold as product. Of course, trace amounts of arsenic may not be collected in the baghouse and would be contained ultimately in the stack emissions. We do not have data indicating at what level either of these two potential events might occur and, therefore, cannot make a judgment about the efficacy of an arsenic recycling standard or the probability or degree of environmental concern about potential releases of arsenic to the air or land. However, later in this notice, we are proposing an approach to assure that emissions from these devices do not present significant environmental threats.

EPA has therefore decided tentatively not to alter the existing arsenic treatment standard. That standard reflects total arsenic concentrations in the land disposed treatment residue from higher-arsenic potliners, and also is designed to prevent significant additions of arsenic via the treatment process (that is, the arsenic remaining in the treatment residues would reflect arsenic in the potliners in the first place). See 63 FR at 51,257–58 (Sept. 24, 1998). Given the current questions regarding whether any superior means of arsenic treatment presently exists, EPA is not in a position to propose a different standard at this time.

While we are not at this time proposing an alternative to the total arsenic standards now in place for K088, we foresee only very limited impacts upon the continuing development of alternative recycling and treatment technologies for K088 by other companies. We note however that should a K088 recycling process be constructed that has, as one of its residuals for land disposal, arsenic at total levels above the current standard, current regulations would prevent disposal of the residual. We emphasize that this does not render the process unusable. However, the generator would have to petition for a variance from the current treatment standard in accordance with 40 CFR 268.44 or for a rulemaking in accordance with 40 CFR 260.20 for the Agency to set appropriate alternative treatment standards. EPA also could adjust the arsenic standard as part of this rulemaking if we receive sufficient information as part of the comment process and the appropriate notice and comment protocols (*e.g.*, a Notice of Data Availability (NODA)) are met.

We are informally engaged in a broader effort to gather data on the effectiveness of current arsenic treatment methods and may revise the arsenic treatment standards for K088 or all hazardous waste upon the completion of these studies, if warranted. In the interim, as part of this docket, we are soliciting your comments on arsenic treatment methods in general, the use of these treatment methods for arsenic in K088, and our technical questions about the Ormet process (particularly with respect to its apparent inability to immobilize arsenic contained in K088).

III. Regulation of K088 Vitrification Units

Because new treatment units are likely to be needed to treat the 120,000 tons of K088 generated each year to achieve compliance with today's proposed standards, the issue of the regulatory status of K088 vitrification units has arisen. We discuss in this section several options for regulating K088 vitrification units and propose that they should be miscellaneous treatment units under RCRA. Furthermore, we propose that these units should be subject to a particular suite of emission controls irrespective of whether the unit recycles K088 treatment residuals back into the aluminum making process or into other products. Furthermore, we note that although the discussion in today's notice is in the context of how to regulate K088 vitrification units, the rationale for regarding these units as Subpart X miscellaneous treatment units would logically extend to all vitrification units treating other hazardous waste. Thus, all vitrification units, whether direct-fired or indirectly heated and irrespective of the waste treated or recycled, would be classified as Subpart X treatment units. Therefore, the Agency solicits your comments on the extension of this approach to all vitrification units treating hazardous waste.

A. Why Are K088 Vitrification Units Generating Glass Frit Subject to RCRA Subtitle C?

The initial issue requiring resolution is whether spent potliners are a solid waste when they are processed by a vitrification unit that generates glass frit and recyclable baghouse dust, both of which can be put to productive use. The argument goes that spent potliners are used as an ingredient in a glass production process, and so are not a solid waste based on 40 CFR 261.2 (e)(1). This subsection excludes from the regulatory definition of solid waste those secondary materials that are used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed. Because this regulation contains a proviso that the process not be reclamation, it is necessary to argue further that the recovery of fluoride values in the baghouse dust is not reclamation to fit within the cited exemption.

Although the issue is not entirely clear-cut, EPA takes the view here that vitrification of K088 is a hazardous waste treatment process, notwithstanding that recovery of something usable can result. *Marine Shale Processors* v. *United States*, 81 F. 3d 1371, 1380 (5th Cir. 1996); *United States* v. *Marine Shale Processors*, 81 F. 3d 1361, 1366 (5th Cir. 1996). These cases indicate that units producing a product may still be engaged in hazardous waste treatment subject to regulation.

Certain traditional criteria suggest that the best way to characterize the process is as conventional treatment plus recycling. For example, we know that spent potliners contain high concentrations of cyanide which is present in concentrations well in excess of that needed to produce glass frit.[22] See *Marine Shale Processors* v. *United States*, 81 F. 3d at 1381–83 and n.3 (concentrations of hazardous constituents in excess of those needed to produce a product are a critical indication that conventional waste treatment, rather than recycling, is occurring). Spent potliners may also

Potliners—K088'' which is available in the RCRA docket supporting this rule for additional detail.

[21] One might think that because the universal treatment standard for arsenic is based on the performance of slag vitrification (see 54 FR 48372 (Nov. 22, 1989)), and because Ormet operates a vitrification process, this process should become the basis for a revised arsenic treatment standard. However, all vitrification processes are not identical. The Ormet process does not appear to chemically bind the arsenic inside a glass-like matrix or frit. Thus, we are uncertain about the underlying similarity or difference between Ormet's vitrification process and slag vitrification (about which we do not have an abundance of data). In addition, we have questions on whether the high concentration of fluoride in the K088 can interfere with some vitrification processes; whether the high carbon concentration in the K088 acts as a reducing agent and inhibits some vitrification processes; and whether the high gas flow and limited solubility of arsenic in molten silica is distinct from slag vitrification. (See USEPA, Treatment Technology Background Document, 1991).

[22] Information suggests that there are certain waste constituents, such as fluoride, that may interfere with the vitrification process if they are present at high levels. However, in Ormet's vitrification process, the fluoride is volatilized and captured in the baghouse, thereby generating two usable outputs; (1) glass frit with low fluoride concentrations; and (2) fluoride-rich dust.

contain relatively high concentrations of carcinogenic polycyclic aromatic hydrocarbons, which do not contribute to the process at all. *United States* v. *Marine Shale Processors*, 81 F. 3d at 1366 ([a] substance cannot be an ingredient in making something if it is merely along for the ride); see also 60 FR at 11723 and n.11 (March 2, 1995) where EPA suggested that K088 could meet the criteria of being ''inherently waste like'' under section 261.2(d) for these reasons. The economics of the vitrification process also suggest that waste treatment is occurring at least in part, since generators of K088 would pay the vitrification facility to process the material, most likely at or near the going rate for hazardous waste treatment. See memorandum from Sylvia K. Lowrance, Director, Office of Solid Waste, to Hazardous Waste Management Division Directors, Regions I–X, entitled ''F006 Recycling,'', dated April 26, 1989, which states that the economics of the process are a criterion for legitimate recycling (*i.e.*, whether most of the revenue come from charging generators for managing their wastes or from the sale of the product). We note, of course, that the recovered fluoride can be sold by the treatment facility.

From a strictly definitional standpoint, the recovery of fluoride values in baghouse dust at least arguably meets the definition of reclamation in § 261.1(c)(4) (which is recovery of contained values in a matrix as a usable end product, the example in the rule being recovery of lead from a spent battery). Here we observe that fluoride in spent potliners being treated by the Ormet vitrification process is recovered as an air pollution control dust and can be returned to the aluminum reduction process as an agent to lower the melting point of the molten cryolite bath used to reduce aluminum from alumina. This means that under § 261.2(e)(1)(i), the fluoride recovery operation is reclamation and that fluoride recovery does not qualify strictly for the current overall recycling exclusion from RCRA. This is a separate proposition from identifying as BDAT a process that includes strong elements of recycling or reclamation in its broadest sense, which are preferred outcomes in the waste management hierarchy.

For these reasons, the Agency interpretation here is that vitrification of spent potliners is best viewed as a type of hazardous waste treatment, notwithstanding the elements of recycling, reclamation, and reuse. Hence, absent some regulatory exemption, some form of subtitle C rule regulatory controls are appropriate. The selection of appropriate controls under RCRA section 3004 and 3005 is a matter within our discretion. The next section discusses what those controls ought to be, with the chief focus on the air emissions from the treatment process.

B. What Hazards May Be Posed by Emissions From K088 Vitrification Units?

K088 can contain toxic constituents at significant concentrations as shown below [23]:

Constituent	Concentration (mg/kg)
Total cyanide	5,800 (0.58%)
Fluoride	135,000 (13.5%)
Beryllium	32
Chromium	59
Lead	26
Arsenic	27.6
Nickel	64
Polycyclic aromatic hydrocarbons	Up to 2,000 (0.2%)

Although cyanide and polycyclic aromatic hydrocarbons (PAHs) are relatively easy to destroy in a combustion system, improper combustion could result in high emissions from untreated compounds in the incoming waste or from products of incomplete combustion. Similarly, the metals present in K088 will condense as the combustion gas is cooled and can be effectively controlled using particulate matter control equipment such as a baghouse. Improper design, operation, or maintenance of the particulate matter control equipment could cause high metals emissions, however. Finally, the high levels of fluoride in K088 could result in unsafe emissions of hydrogen fluoride if the gas cleaning system is not properly designed, operated, and maintained.

C. What Regulatory Options Is EPA Considering?

We considered a number of control approaches under RCRA for K088 vitrification units, partly based on traditional classification criteria, including those for an incinerator, industrial furnace, or Subpart X miscellaneous treatment unit. We also considered whether the potential hazards posed by vitrification unit air emissions should be controlled by establishing MACT (Maximum Achievable Control Technology) standards under Section 112 of the Clean Air Act instead of using RCRA authorities. We discuss below our current thinking on these options and propose that K088 vitrification units can most effectively and efficiently controlled under our program for RCRA Subpart X miscellaneous treatment units. We also propose to have these units be presumptively subject to the recent MACT hazardous waste incinerator standards as a point of departure in developing the suite of Subpart X permit conditions to be imposed, irrespective of whether the facility engages in recycling of K088.

Incinerator Approach. While the one operating K088 vitrification system at Ormet uses controlled flame combustion and therefore meets the RCRA definition of an incinerator in 40 CFR 260.10, glass vitrification units can also be heated indirectly using electricity. See US EPA, Treatment Technology Background Document, January 1991, at p. 114. Indirectly heated units would be outside of the RCRA definition of an incinerator in § 260.10. To simplify decisions on regulatory classification, we propose to regulate all vitrification units the same given that their primary function is essentially the same (i.e., they treat waste by vitrification) whether or not the unit is direct-fired.[24] This would

[23] Source: USEPA, Proposed Best Demonstrated Available Technology (BDAT) Background document for Spent Aluminum Potliners—K088. The concentrations presented represent the maximum concentrations of contaminant. K088 also contains other toxic metals at lower concentrations, including cadmium, and selenium.

[24] See 60 FR at 11,723 (March 2, 1995) (K088 treatment devices should be subject to uniform standards if possible, given that they are performing the same function and are likely to pose the same types of risks).

avoid significant implementation issues for EPA and for individual State and regional permit writers, especially if custom-designed vitrification units employ variations in design and operation or experience variations in emissions that may derive from controlled flame combustion versus indirect heating configurations. We wish to avoid unnecessary confusion and controversy (with attendant delays) in any permit implementation scheme. This would not be feasible under § 260.10 and an incinerator approach unless we were assured that all current and future units would be direct-fired. We can reach a workable solution by other means (see Subpart X discussion below).

Industrial Furnace Approach. Vitrification units that are an integral component of a manufacturing process could potentially be considered a type of smelting, melting, or refining furnace (SMRF) that is listed as a category of industrial furnace under the regulatory definition in 40 CFR 260.10. Although the Agency had originally intended the SMRF category of industrial furnaces to apply to metallurgical furnaces, one could possibly interpret the category to also include glass or slag vitrification furnaces as a type of melting furnace. We considered whether it would be appropriate to explicitly add K088 vitrification units to the list of industrial furnaces in § 260.10 through this rulemaking. Under this approach, emission standards could be established under Subpart H of Part 266 and implemented through the BIF permit process under RCRA.

To be considered an industrial furnace, however, the unit must be an integral component of a manufacturing process and must use thermal treatment ''to accomplish recovery of material products;'' see also Marine Shale, 81 F. 3d at 1381–83 construing this definition. As discussed earlier, there are elements of waste treatment about these K088 vitrifying activities. In addition, unlike currently recognized industrial furnaces, the outputs of the vitrification process are entirely the result of K088 input and treatment and are not, for example, historical production processes that are using waste as an ingredient substitute.

We initially conclude that classifying K088 vitrification units as industrial furnaces is problematic. Ormet asserts that the frit is marketable for a variety of uses, including polishing and grinding, backing for asphalt shingles, molding for steel castings and as cullet in glass or ceramic manufacturing. The fluoride can be sold as a flux to steel mills as well as being recycled as a electrolyte in the aluminum industry. If, however, the market for the frit or the fluoride dust is not sustainable, the facility would not meet the primary criterion for an industrial furnace. See *Marine Shale* v. *United States*, 81 F.3d at 1383–84 (device listed as an industrial furnace which does not in fact engage in recovery of material products is not an industrial furnace, since industrial furnaces, by definition, must be used primarily to accomplish recovery of material products). We do not have any evidence that the current markets can use the amount of purported product that would be generated by vitrification processes treating 120,000 tons of K088 each year. Indeed, the amounts involved suggest caution about assuming constant demand, especially for the frit.

Finally, it is not a good use of constrained Agency resources to proceed with a rulemaking to list K088 vitrification units as industrial furnaces in § 260.10 and then to establish standards specific to those units. This is particularly the case here given that we expect only a few facilities to be constructed to meet the treatment capacity demand and given the availability of recently-upgraded emission standards for incinerators that can be applied through the Subpart X approach discussed next.

Subpart X Miscellaneous Treatment Unit Approach. Early on, the RCRA program recognized that treatment units (including thermal) may not fit easily into any existing classification, including those for incinerators and BIFs. As a result, EPA created a category known as Subpart X miscellaneous units.[25]

Design and operational conditions are developed for Subpart X units on a facility-by-facility basis by a regional or state permit writer, who has wide flexibility to impose conditions appropriate to protecting human health and the environment. 40 CFR 264.601. Typically, Subpart X permit writers are expected to incorporate existing standards for other types of units that would address the same or similar types of environmental and regulatory concerns. For example, Subpart X thermal treatment unit permits would likely incorporate many or all permit conditions and standards developed for other thermal units burning hazardous waste, *e.g.*, incinerators. See the discussion below giving further guidance on appropriate air emission standards for K088 vitrification units.

The Subpart X miscellaneous unit approach therefore offers implementation flexibility that de-emphasizes our somewhat rigid regulatory definitions and optimizes the ability of regulatory agencies to impose appropriate, environmentally protective conditions on a case-by-case basis. (A trade-off is the uncertainty of not knowing in advance what standards apply to a given activity, plus the administrative burden and inefficiencies of dealing with units on an ad hoc basis. These problems appear resolvable here, as explained below, because there are likely to be only a few units involved, and we are indicating a potential starting point for emission standards in this rulemaking.)

Using Subpart X as the umbrella approach for K088 vitrification units thereby offers an opportunity to avoid the potential implementation confusion and additional regulatory burdens involved in the two alternative approaches discussed above.[26] We would be able to address the permitting of K088 vitrification units in a consolidated fashion that would make unnecessary the need to engage in lengthy discussions about how regulatory definitions would apply. Rather, time and effort would be spent on characterizing the design, operation, and emissions of K088 treatment units

[25] Subpart X refers to the permit standards under Subpart X, Part 264, for units not eligible for interim status. Miscellaneous thermal treatment units operating under interim status are subject to Subpart P, Part 265.

[26] Use of the Subpart X miscellaneous unit approach may also be appropriate for other K088 treatment units (whether vitrification or not) that do not fit neatly into the previously described categories. These units may be evaluated on a case-by case basis or at such time that their operation is imminent. For these units, the Subpart X miscellaneous unit approach would again offer implementation flexibility and allow regulators to impose appropriate, environmentally protective conditions on a case-by-case basis.

and developing appropriate regulatory control. We also note that this is basically the approach the Agency previously used to implement controls for both direct-fired and indirect-fired carbon regeneration units. See 56 FR at 7200 (Feb. 21, 1991).

1. K088 Vitrification Units Should Be Regulated Even If Engaged in Bona Fide Recycling

We have discussed earlier the Agency's view that vitrification of K088 is a form of waste treatment, not excluded recycling. However, under EPA regulations (see 40 CFR 261.6(c)), the corollary issue of a recycling unit being exempt from permitting warrants brief mention. Under § 261.6(c), certain types of Subpart X recycling units have been regarded as exempt from permitting—either under application of EPA's own regulations or under a state's authorized implementing regulations. Today, we are proposing to regulate K088 vitrification units regardless of whether or not processing of hazardous waste K088 might otherwise be considered to be exempt recycling under current permit regulations in § 261.6(c).

Our proposed approach is consistent with EPA's general approach to regulate air emissions from hazardous waste recycling activities. Under current RCRA regulations, treatment units (other than industrial furnaces) that recycle hazardous waste are still subject to the standards of Parts 264 and 265. See 40 CFR 261.6(d). Likewise, industrial furnaces are subject to air emission standards in 40 CFR Part 266 when they burn hazardous waste for any purpose except certain types of metal recovery. Even if a K088 vitrification unit were to be viewed as being engaged in bona fide recycling of K088 along with its conventional treatment of that waste, today's proposed regulations would not allow this particular type of unit to be exempt from permitting and a full suite of appropriate emission standards. This is, at least in part, because K088 can contain high concentrations of toxic compounds. Improper design, operation, or maintenance of the reactor or gas cleaning system could result in emissions of toxic compounds at levels that could pose a hazard to human health and the environment. In addition, we note that, as discussed above, if we were not to classify K088 vitrification units as miscellaneous treatment units potentially eligible for the recycling exemption, direct-fired units could be appropriately classified as incinerators subject to the recently promulgated MACT incinerator standards.

2. Standards Applicable to K088 Vitrification Units

As discussed above, a Subpart X miscellaneous treatment unit classification is particularly apt because we expect it will result in appropriate emission controls, allowed for a consolidated implementation scheme, and avoid controversy over RCRA definitional issues. Permits issued under Subpart X must contain terms and provisions as necessary on a case-by-case basis to ensure protection of human health and the environment. See 40 CFR 264.601. This broad performance standard can be viewed as being another potential source of controversy and attendant delay for the construction and operation of new, properly controlled K088 vitrification units.[27] Therefore, we are also proposing, as part of the Subpart X approach, that permit writers must consider the recently-promulgated hazardous waste incinerator standards[28] as the point of departure for any Subpart X K088 vitrification unit.

This means that, absent factors suggesting otherwise, a K088 vitrification unit would be subject to the same standards as a hazardous waste incinerator (see 64 FR at 52993–94 (Sept. 30, 1999). Applying the incinerator MACT standards to K088 vitrification units could be accomplished either through direct regulatory provisions that can be added to 40 CFR Part 265 or via guidance to permit writers on how to approach developing permit conditions for these units on a site-by-site basis. Under either approach, if a particular incinerator standard is not technically applicable to the type of device or if it is unnecessary to ensure protection, then the permit writer is free to develop a technical justification as to why that particular standard should not be included in a permit. Again, this implementation scheme should shift the dialogue from one of definitional classification to one focused on the unit controls necessary to adequately protect the public and the environment. And, as noted above, it also offers the implementation advantage of having one type of permitting scheme for all K088 treatment unit designs, regardless of whether they are directly or indirectly fired.

We have looked closely at whether the MACT hazardous waste incinerator standards are the most appropriate for K088 vitrification units, and conclude that those standards are technically appropriate and necessary to address the hazards posed by toxic metal and nonmetal emissions from these units. Two issues should be discussed, however. First, K088 vitrification units may not feed enough chlorine to exceed the MACT incinerator standards for hydrogen chloride and chlorine gas, combined, even if emissions are uncontrolled. Our MACT regulations minimize the compliance burden in such cases by waiving emissions testing, and requiring only monitoring of feedrate to document that the standards could not be exceeded if emissions were uncontrolled. This approach can certainly be considered by permit writers dealing with K088 vitrification units. Second, the MACT incinerator standards do not establish controls specific to hydrogen fluoride, which is potentially a significant pollutant from K088 vitrification units. Accordingly, permit writers must consider whether additional permit conditions are needed to ensure that emissions of hydrogen fluoride do not pose a hazard to human health and the environment.

3. Availability of Interim Status for Existing K088 Treatment Units

A K088 vitrification unit is currently in operation at the Ormet Primary Aluminum Reduction facility in Hannibal, Ohio. At least some of the frit and baghouse dust from the vitrification unit appear to be recycled for beneficial use. As a State authorized to implement the applicable RCRA standards, Ohio has previously determined that this vitrification unit is excluded from RCRA regulation. As discussed above, when viewing this issue from a national policy perspective (and not on the site-specific factors that Ohio may have relied upon in its determination), we are persuaded that K088 vitrification units should be regulated for a number of reasons already discussed above, some of which are independent of whether recycling is deemed to occur. The status of the existing Ormet K088 vitrification unit could therefore become an issue under today's proposal, and regulatory confusion could easily result.

Because of the potential for confusion as to the proper classification and

[27] A RCRA storage permit is a necessity in all cases where storage occurs (except storage falling within the 90-day storage provisions of 40 CFR 262.34). Thus, RCRA permitting may be needed at a given site for reasons other than the vitrification unit itself.

[28] As noted earlier, these MACT standards are also protective of human health and the environment and are therefore presumptively appropriate for inclusion in RCRA Subpart X permits. See 64 FR at 52834, col. 3 (Sept. 30, 1999) (EPA concludes that the MACT standards are generally protective of human health and the environment).

ultimately the proper emission controls that should apply to any existing K088 vitrification facility, it would be appropriate for a state, should it so chose, to use the authority of 270.10(c) to allow an existing facility to submit Part A of a RCRA permit application and to operate under the interim status standards of Subpart P, Part 265, within 30 days of the date of promulgation of these revised LDRs for K088. See 60 FR at 11,723 (March 2, 1995) noting that it may be appropriate for EPA to make the substantial confusion finding because of unclear status of potential K088 treatment technologies. Questions about other interim status issues (such as adding a vitrification unit as a change in interim status) should be addressed to the Region or State administering the RCRA permit regulations at the plant location.

4. Why We Are Not Developing Separate MACT Standards Solely for K088 Vitrification Units?

Under this potential rulemaking option, we could use the authority of section 112(d) of the Clean Air Act to establish technology-based MACT (maximum achievable control technology) standards solely for these units. In such a case, RCRA air emission standards may be unnecessary since the MACT standards could also be sufficiently protective of human health and the environment. See RCRA section 1006(b) allowing EPA to defer RCRA regulation where it may unnecessarily duplicate provisions adopted under other environmental statutes, including the Clean Air Act.

Most significant from our perspective is the prospective resource commitment needed to develop MACT standards specific to K088 vitrification units. Such an effort has not been planned to date, and this effort would divert already constrained Agency resources to develop a regulatory regime applicable possibly only to a handful of units. Indeed, under a worst case scenario, the MACT standards development process could take as long or longer than a case-by-case permitting approach under Subpart X for new treatment facilities. This is particularly true if several units can be built quickly, but we need to wait for full-scale operations to obtain the emissions testing data to develop national MACT standards. In addition, we have concluded that the recently-promulgated MACT incinerator standards (perhaps with an additional standard to control hydrogen fluoride) would address the potential air emissions concerns that we now have. Starting a separate rulemaking would appear to be unnecessary from an environmental protection standpoint.

On balance, given that we expect that only a handful of new sources would be needed to meet the K088 treatment capacity demand and the existence of standards that can be applied to these Units, it does not appear cost-effective for the Agency to pursue a separate rulemaking to develop MACT standards to control emissions specifically from these sources. Rather, it appears more appropriate to adopt a RCRA Subpart X approach for regulating K088 vitrification units.

D. What Rule Changes Are Being Proposed To Regulate K088 Vitrification Units as Miscellaneous Treatment Units?

To enable K088 vitrification units to be able to be regulated as miscellaneous treatment units, we propose to revise the definition of an incinerator in § 260.10 to specifically exclude K088 vitrification units. This would ensure that direct-fired vitrification units are not classified as incinerators. In addition, we propose to add a definition for K088 vitrification unit. See proposed amendments to § 260.10. Because K088 vitrification units would not meet the definition of incinerator or boiler, and because K088 vitrification units are not listed as a type of industrial furnace, they would not qualify as BIFs and therefore would be classified by default as miscellaneous treatment units (along with sludge dryers and carbon regeneration units, for example). Please note that we are also requesting comment on whether to expand these regulatory changes to include all vitrification units and/or all types of K088 treatment units (whether vitrification or not).

E. What Is the Status of the Outputs From a K088 Vitrification Process?

As discussed above, Ormet's treatment process, which can be defined as a K088 vitrification process, generates two treatment residuals: a glass frit which is usable as a commercial product and a fluoride-rich baghouse dust that can be recycled back into the aluminum reduction pots as electrolyte or sold as a product for other industrial uses such as steel making. EPA is proposing here that both of these output streams be classified as products, and no longer solid wastes, provided certain conditions are satisfied. When put to productive use, this will avoid inappropriate Subtitle C regulation of these recycling activities. We will address the conditions for the glass frit and the fluoride-rich baghouse dust separately.

First, the glass frit, would be required to meet *all* the numerical treatment standards for K088 and it would have to be recycled. The Agency is proposing that this product be required to meet the LDR treatment standards to ensure the effective treatment of cyanide, fluoride and other regulated constituents in K088. Furthermore, it is important to note that at some point this product could be land disposed and there exists a need to address potential environmental consequences of this land disposal. By having to meet the K088 treatment standards, the glass frit is subject to a set of treatment standards that minimize threats to human health and the environment. We reiterate here, that if the glass frit is not recycled, it is still a K088 waste and must meet the treatment standards found in § 268.40 prior to land disposal in a Subtitle C land disposal unit.

The proposed conditions for the baghouse dusts are that they be recycled (e.g., returned for use to a primary aluminum process or to another process) and not be land disposed (i.e., placed on the land) before reintroduction into these industrial processes. This proposal is consistent with the principle (applicable to reclamation processes) found in existing rules. See § 261.3(c)(2)(i) stating that the output of a reclamation process typically is no longer a solid waste and § 261.2(e)(i) indicating that secondary materials put to direct use ordinarily are not solid wastes. EPA is proposing these conditions for two central reasons: (1) the baghouse dust is similar to raw materials currently utilized by industry in terms of physical properties and types and concentrations of hazardous constituents; [29] and (2) the concentration of fluoride in the baghouse dust is so high (and greatly in excess of the levels proposed as the treatment standard today for fluoride) that EPA is uncertain that other dispositions would be safe. The proposed exclusion limits the type of recycling of the baghouse dust to situations where the dust is used as an ingredient, or is used for material recovery (i.e., reclaimed) by being reintroduced into other industrial processes (normally primary aluminum

[29] The fluoride-rich baghouse dust can be used as a reducing agent for metals processed in iron and steel furnaces, the can also serve as a substitute for fluor-spar (calcium fluoride) which is typically between 95–100 pure calcium fluoride. Preliminary analysis of the baghouse dust show the concentration of all regulated organic constituents at below detectable levels (<.330 mg/kg). Analysis of the 11 UTS metals show leachate levels well below the K088 treatment standards. Cyanide concentrations are also below detectable levels (<.5 mg/kg).

or potentially steel production). EPA has added this qualification in the unlikely event that the baghouse dust would be burned as a fuel (probably not legitimate recycling in any case). It is our understanding that the proposed language covers all of the current and contemplated means of recycling the baghouse dust. The condition on there being no land disposal before return to the primary aluminum process is necessary to ensure that the basic LDR goal is not derogated. These baghouse dusts would not meet today's proposed treatment standards for fluoride, so that allowing their land disposal (in the guise of products stored on the land prior to recycling) would be inconsistent with the purpose of the LDR program, the prohibition and treatment standards for spent potliners, and our goal to ensure that recycling does not present threats to human health and the environment.[30]

In addition, EPA is including the standard condition that both these materials not be accumulated speculatively before recycling. Such prolonged storage would be inconsistent with the proposed product status, and indeed would raise the same types of concerns that the RCRA storage prohibition (codified in § 268.50) is intended to stop.

IV. Status of Interim Standards and Proposed Effective Date for Amended Standards

Typically, prohibitions on land disposal of hazardous waste are to take effect immediately upon promulgation, but may be postponed for two years on a national basis and (potentially) two more years on a case-by-case basis from the ''earliest date on which adequate alternative treatment, recovery or disposal capacity that protects human health and the environment will be available.'' RCRA section 3004(h)(2). Here, however, spent potliners are already prohibited from land disposal (as of September 24, 1998; 63 FR 51254). Thus, the period during which EPA could conceivably issue any type of variance based on the available treatment capacity is already running out (less than a year remains on the potential national capacity variance period) and could already have expired by the time EPA issues a final rule adopting amended K088 treatment standards. A basic question, therefore, is whether there should be any lapse in the existing prohibition and treatment standards during the time it takes for additional treatment capacity to be created to treat K088 to the proposed treatment standards (assuming EPA adopts them). A second question is when the effective date should be for the amended standards (again, assuming EPA adopts them). These questions are discussed below.

A. Are the Interim Standards Still in Effect?

EPA proposes that there should be no lapse in the existing prohibition and treatment standards because if there were, land disposal of untreated spent potliners could resume. As EPA has explained at length, this result would be directly at odds with the central objective of the land disposal restriction statutory provisions. See 63 FR 51255–256. Moreover, EPA has already determined that there currently exists adequately protective treatment and disposal capacity for spent potliners treated to meet the existing (interim) treatment standards. See 62 FR 37696–697. Thus, EPA knows of no reason to justify eliminating the existing land disposal prohibition and treatment standards during the period before additional treatment capacity capable of meeting the proposed standards becomes available.

B. When Should the New Treatment Standards Take Effect?

EPA is guided by the overall objective of section 3004(h): treatment standards which best accomplish the objective of section 3004(m) to minimize threats posed by land disposal—should take effect as soon as possible, consistent with availability of protective treatment capacity. Therefore, we estimated how long it will take for available treatment capacity to be created and satisfy the proposed treatment standards.[31] We are basing the proposed effective date for today's treatment standards on this estimate.

Because a land disposal prohibition and interim treatment standards for K088 waste already exist under the interim rule of September 24, 1998, we propose as noted above to leave these requirements in place until the final rule adopting amended treatment standards becomes effective. Furthermore, although there are no legal constraints to limit EPA's potential implementation time period for a final rule amending these treatment standards, EPA will establish an appropriate effective date based on the projected availability of treatment or recovery capacity that can meet today's proposed treatment standards.

Key determinants of K088 generation include primary aluminum production rates (which vary from year to year), the useful life spans of different types of potliners, the lag time between aluminum production and waste generation, and occasional increases in potliner waste generation due to production starts and stops. To compare the required treatment or recovery capacity to available commercial capacity that can meet today's proposed treatment standards, EPA combined all data presented in previous rulemakings and used the 1997 Biennial Reporting System (BRS) to update these data. At the present time, EPA estimates that approximately 80,000–100,000 tons per year of K088 waste would require alternative management to meet the proposed treatment standards.

The majority of available commercial K088 waste treatment capacity in the United States exists at the Reynolds Gum Springs facility in Arkansas. This facility uses a thermal treatment system capable of treating approximately 120,000 tons of K088 waste per year and meeting the interim treatment standards promulgated on September 24, 1998. Two additional U.S. facilities have available technology to treat K088 waste to the interim standards. They are Chemical Waste Management of the Northwest, Inc. (CWMNW), which uses a combination of chemical oxidation and stabilization to treat commercial K088 waste, and a primary aluminum producer, Ormet, which uses a Vortec vitrification system to manage its own K088 waste. Other technologies, under development, although appearing to be promising, are not yet operating commercially.

In today's proposed rule, EPA would amend the treatment standards based on vitrification performance data and thus significantly lower the existing treatment standards for fluoride and total and amenable cyanide in K088 nonwastewaters. Available data suggest that the existing treatment process at the Reynolds Gum Springs facility cannot meet the proposed treatment standard for cyanide (both total and amenable) and fluoride for most (and perhaps all) of the K088 wastes currently being treated at the facility. Even if Reynolds can reconfigure or adjust its thermal

[30] It should be noted however that although the arsenic found in the baghouse would not meet the treatment standard for arsenic in K088 nonwastewaters (26.1 mg/kg), as part of the development of this proposed rule, we subjected this waste to numerous alternative arsenic leach tests, using a variety of leachate media. Based on our preliminary analysis, the leachate from the baghouse dust would not fail the TCLP for arsenic (5 mg/L) nor would it fail using any number of alternate leach tests. See the background document supporting this rule for additional discussion.

[31] The data and detailed analysis on the effective date for proposed treatment standards can be found in the Background Document to Establish the Effective Date for Amended Treatment Standards in the docket for this proposed rulemaking.

treatment process or purchase an additional treatment system, a substantial amount of time may be required. CWMNW, the other commercial treatment facility, will not meet the proposed treatment standards for total and amenable cyanide and fluoride in K088 with its current chemical treatment. Therefore, there is uncertainty whether CWMNW will continue to provide treatment capacity to meet the amended treatment standards for K088 waste.

At this time, among K088 generators, only Ormet appears to have an on-site management treatment technology (vitrification) capable of meeting the proposed treatment standards. The Ormet unit's capacity is up to 10,000 tons per year. The treatment capacity is based on Ormet's own waste generation and the company has no plans to expand its on-site capacity or accept K088 from other generators.

Based on this information, we find that no commercial vitrification or equivalent capacity currently exists that could meet the proposed treatment standards for K088 waste. Nevertheless, projects to construct plants for spent potliner recycling are currently in the planning phase. For example, in 1997, Vortec and Ormet formed a joint technology development enterprise (SPL Recycling, LLC) to assist in the development of waste recycling projects in the aluminum industry. Also, Reynolds is examining recycling technologies potentially capable of meeting the revised treatment standards. Some primary aluminum producers are also investigating recycling technologies to handle their K088 waste. Although other firms are also studying alternative K088 treatment or recycling technologies or processes (e.g., gasification, the ''Alcoa-Selca'' process, and the Spent Potliner Test Plan by AshGrove Cement Company). Most of these technologies and processes have not yet been proven commercially, and uncertainty exists about their potential to meet the proposed treatment standards.

The amount of time needed to establish sufficient vitrification or equivalent capacity for all K088 wastes—which essentially dictates our selection of an effective date for the amended standards—is affected by the need for treatment facilities to conduct full design and engineering assessments, negotiate contractual agreements, obtain permits from appropriate regulatory agencies, construct the systems, set up the appropriate infrastructures, and make other logistical arrangements necessary to receive, store, treat and recycle or dispose of K088 wastes. Such a process can take years to accomplish. For example, approximately two years were needed to before Ormet's vitrification system became operational. Using this example and other information noted in the background document for this analysis of the appropriate effective date for this rule, EPA is proposing to delay the effective date for two years following final rule promulgation. Although two years may or may not be adequate for certain systems to become operational and meet the proposed treatment standards for K088 waste, the length of time needed depends on whether the facility has an existing treatment system or will build a new system. For example, if a facility has an existing thermal system capable of treating K088 waste already, then it may replace its existing system with a vitrification device to meet the proposed requirements and new treatment standards if EPA adopts them. EPA will consider comments and other available information to adjust the time required before treatment capacity capable of meeting the revised treatment standards will be available.

In today's rule, as discussed above, EPA is not soliciting comments on the land disposal prohibition or interim standards for K088 waste. EPA is requesting capacity data and information solely to better assess when treatment or recovery capacity could become available and meet the proposed treatment standards. EPA is also seeking comments on whether two years after the final rule effective date is a sufficient time period to allow for adequate treatment or recovery capacity to become operational.

V. Compliance and Implementation

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's proposal would be promulgated pursuant to sections 3004 (g)(4) and (m) of RCRA. It either directly implements these provisions or, in the case of the provisions relating to classification of K088 treatment devices and their outputs, is necessary to implement the section 3004 (g) and (m) K088 treatment standards. Therefore, when promulgated, the Agency would add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. This rule would be effective in all States immediately pursuant to RCRA section 3006(g). States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, when promulgated, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because today's rule would be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. However, with respect to the classification of K088 thermal treatment devices as Subpart X units for permitting purposes, we note that many states already have authorization to issue Subpart X permits. Therefore, as a practical matter, these States would continue to be the appropriate permitting authority for K088 thermal treatment devices after promulgation of this rule. If a state is not yet authorized for Subpart X permitting, we encourage those States to apply for Subpart X authority as soon as possible after issuance of this proposal and not wait

until promulgation of the final rule. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. All HSWA interim authorizations will expire January 1, 2003. (See § 271.24 and 57 FR 60132, December 18, 1992.)

VI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of novel policy reasons. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. The Agency estimated the costs of today's proposed rule to determine if it is a significant regulation as defined by the Executive Order. Because the treatment standards for K088 promulgated in the September 28, 1998 final rule (Interim Treatment Standards for Spent Aluminum Potliners from Primary Aluminum Reduction) have remained in effect, treatment costs for spent aluminum potliner have already been accounted for. Accordingly, EPA believes that there are no costs associated with the existing treatment standards in today's proposed rule. (According to the Court, none of the standards measured by means other than TCLP were affected by the ruling, 139 F.3d at 923, so no costs should be attributed to treating constituents other than cyanide and fluoride under this rule in any case.) Incremental annual treatment costs for cyanide and fluoride attributed to today's proposed rule range from a low estimate of $12.4 million to a high estimate of $36.8 million. The high treatment estimate of $36.8 million is not economically significant according to the definition in Executive Order 12866. These treatment estimates represent only direct expenditures for treatment of cyanide and fluoride attributable to today's proposed rule.

Discussion of the methodology used for estimating the costs and economic impacts attributable to today's proposed rule for K088 wastes may be found in the background document ''Economic Assessment for Revised LDR Treatment Standards for Spent Aluminum Potliner (K088)'' which was placed in the docket for today's proposed rule. EPA requests comments on the analytical approach to estimate the costs of today's proposed rule, as well as on the economic analysis background document. Further, EPA requests data (cost and/or engineering) to further refine assumptions underlying the implementation of Vortec. Of particular interest to EPA is information on actual commercial costs of the Vortec technology.

1. Methodology Section

The Agency examined reported values for K088 generation from prior Agency estimates in the Phase III LDR final rule to estimate the volumes of K088 affected by today's rule, to determine the national level incremental costs (for both the baseline and three post-regulatory scenarios) and economic impacts. Economic impacts were estimated based upon incremental costs as a percent of sales for three different scenarios. It should be noted that these are hypothetical scenarios, and do not necessarily predict the actual course of action potentially taken by any particular treatment facility. The Agency believes these three hypothetical scenarios to be a reasonable representation of the potential range of possible outcomes of this proposed rule. However, scenario two is thought to be the least likely of the three hypothetical scenarios, and is presented primarily for illustrative purposes. Scenario's one and three represent the range of anticipated responses given the current political environment in which the aluminum industry operates: on-site or off-site treatment in the northwest U.S. versus commercial treatment at the Reynolds Aluminum, Gum Springs, Arkansas facility. The Agency requests comments on these three hypothetical scenarios as well as any alternative scenarios in response to the proposed rule.

Scenario 1: Assumes two facilities will be available for treating K088, one owned by Reynolds, and one storage facility owned by CWMNW. Both facilities are assumed to be retrofitted with the Vortec technology to meet the revised treatment standards;

Scenario 2: Assumes only the treatment facility owned by Reynolds will be available. This facility is assumed to be retrofitted with the Vortec technology; and

Scenario 3: Assumes that facilities in the Pacific Northwest treat on-site using the Vortec technology (using a cost structure similar to the Ormet facility in Hannibal, Ohio), and assumes that the Reynolds facility also will be retrofitted with the Vortec technology.

The basis for the baseline thresholds are the engineering design capacity for one facility and current treatment rates at another. Under the baseline, the existing Reynolds off-site thermal treatment system located in Gum Springs, Arkansas has a design treatment capacity of 120,000 tons per year. Only, 48,455 tons of this capacity were utilized in 1998. The existing CWMNW off-site storage/treatment facility located near Arlington, Oregon has a treatment capacity of 60,000 tons per year based on a communication with the facility that they currently are treating K088 at a rate of 5,000 tons per month.

Unit costs for crushers, impact mills, hammer mills, and on-site Vortec Combustion Melt Systems are scaled based on cost estimates known or developed for certain capacities. Capital costs are scaled to the 0.6 power and operation & maintenance costs are scaled to the 0.9 power to reflect economies of scale with varying capacities. In its simplest form, the equations are as follows:

$$\text{Scaled Capital Cost} = (\text{Known Capital Cost}) * (\text{New Capacity}/\text{Known Capacity})^{0.6}$$

$$\text{Scaled O\&M Cost} = (\text{Known O\&M Cost}) * (\text{New Capacity}/\text{Known Capacity})^{0.9}$$

For off-site Vortec Combustion Melt Systems, unit prices are not scaled based on capacity. Instead a range of unit costs (based on vitrification and incineration market pricing assumed to be high estimates) are used to represent the range of potential commercial pricing that may occur within the post-regulation K088 treatment market.

EPA knows of only two full-scale Vortec systems that have been constructed to date. One plant treats radioactive-contaminated soil and the

other treats K088. They have capacities of 12,950 tons per year and 7,000 tons per year, respectively. The Vortec technology has been licensed to Japan's Mitsubishi Kasei Engineering Co. for the treatment of municipal incinerator ash which is typically generated in larger amounts than K088 annually. This indicates that larger design capacities are likely feasible. The economic assessment estimates costs for systems ranging in capacity from 3,150 tons per year to 85,000 tons per year. We have assumed that, similar to other larger vitrification technologies, Vortec capacities can be built through multiple lines and combining storage requirements. Costs will be higher for multiple lines because not all fixed costs can be shared among lines. These potentially higher costs have been captured within the range of market price proxies used based on vitrification and incineration commercial operations to estimate potential cost impacts.

EPA chose a rate of 50 percent debt to 50 percent equity (or 1.0 debt-equity ratio) as a proxy for actual industry debt-equity structures. The debt-equity ratio may shed some light on the cost of financing the capital expenditures to fully comply with the proposed rule. While the cost of debt financing (interest expenditures) is readily apparent, the cost of equity financing may be more difficult to discern. While many of the larger companies are less reliant on debt financing (*e.g.,* Reynolds Metals and ALCOA have respective debt-equity ratio of approximately 0.7 and 0.5), some of the publicly traded firms are heavily reliant on debt capital (*e.g.,* Kaiser Aluminum has a debt-equity ratio of 35). Data were not obtained for closely-held companies in the industry; EPA assumes that these companies' debt-equity positions would be similar to other aluminum industries (*e.g.,* extruded aluminum, aluminum foundries, die-cast aluminum and secondary nonferrous metals) for which data are available. A review of consolidated financial statements in these related industries (as published in Robert Morris Associates Annual Statement Studies) showed debt-equity ratios in the 1.0 to 1.5 range. We selected a debt-equity ratio of 1.0 rather than other values because it is near the midpoint of the 0.5 to 0.7 (Reynolds Metals and ALCOA) and 1.0 to 1.5 (Robert Morris Associates Annual Statement Studies) ranges. We request comment on the appropriateness of these debt-equity ratios for use in the aluminum industry.

Crusher, impact mill, and hammer mill cost estimates include the following capital cost elements:

- Access road,
- Site preparation (grading),
- Concrete slab on grade,
- Structural steel,
- Conveyor,
- Storage silo (1-day),
- Hopper,
- Crusher, impact mill, or hammer mill equipment purchase and installation costs,
- Pilot test of crusher, impact mill or hammer mill,
- Vibratory screen,
- Instrumentation and electrical,
- Indirect capital cost allowances (permits at 1.25%, insurance and bonding at 2%, construction management at 6%, engineering design at 5%, project management at 2.5%, and overhead and profit at 20%), and
- Contingency on direct and indirect capital costs at 15%.

Crusher, impact mill, and hammer mill cost estimates include the following operation and maintenance cost elements:

- Operator oversight,
- Maintenance labor,
- Maintenance material at 7% of capital,
- Electricity,
- Indirect O&M allowances (project management at 5%), and
- Contingency on direct and indirect O&M costs at 10%.

On-site Vortec Combustion Melting System cost estimates were not developed from the ground up similar to the crushing and milling cost estimates. They were estimated based on scaling aggregate costs obtained from literature. The Department of Energy (DOE) spent $11.6 million to construct a 12,950 ton per year system to treat radioactively contaminated soil in Paducah, Kentucky. EPA assumed that this cost estimate included all the capital cost components listed. In a recent communication with Ormet Primary Aluminum Corporation on February 1, 2000, it was estimated that it would cost $10 million today to construct a similar-sized 7,000 ton per year system to the one they are operating currently. Ormet had to make several modifications to the system and actually spent more than $10 million. Others likely can learn from their experience which is why they estimated only $10 million. EPA did not modify the Paducah cost estimate even though it may be a high estimate for future construction given the others will learn from their experience thus lowering their costs. For O&M costs, we assumed a unit cost at the high end of the $150–$300/ton range estimated for a NHW vitrification system. In recent communication with Ormet, they estimate it cost them less than $300 per ton (excluding depreciation) to operate and maintain their systems.

Off-site Vortec Combustion Melting System cost estimates were not developed from the ground up similar to the crushing and milling cost estimates. Unit price estimates were developed using market unit price estimates for commercial vitrification and commercial incineration as a proxy for the range of potential market pricing. This range of commercial unit prices should account for all the potential costs included in the list of cost elements in the question.

Under Scenario 3, EPA assumed crusher, impact mill, and hammer mill capacity based on current K088 generation rates for that plant. EPA further assumed that additional capacity could be added in the future in generation rates increased. ''Site-specific'' was changed to ''current K088 generation.'' However, for the Vortec Combustion Melting System, a design capacity that is 40 percent greater than the plants current K088 generation rate was assumed. EPA assumed it would be more difficult to add capacity in the future for the Vortec system and that the initial investment for additional capacity will be made now rather than later.

2. Results

a. Volume Results. EPA estimated an average of 87,746 tons annually for purposes of assessing cost and economic impacts from today's proposed rule. This estimate is based upon the total reported generated quantity managed in 1997, including the 1995 reported quantity for Kaiser Aluminum & Chemical Corporation, Mead, Washington.[32] Moreover, spent potliner (SPL) generation is in the range of 80,000 to 100,000 tons annually.[33] An additional 20,000 tons reported in the 1997 BRS (including leachate and wastestreams that carried other EPA waste codes) were excluded from the economic analysis as they were determined not to be within the scope of today's rule. Previous analyses were based upon generation of an estimated 120,000 tons of SPL annually. This estimate was based upon available data sources from the Phase III Land Disposal Restrictions Final Rule (61 FR 15566, April 8, 1996.). The current K088 treatment standards became effective in

[32] Kaiser Aluminum and Chemical Corp., Mead, Washington facility did not report generating K088 in the 1997 Biennnial Reporting System (BRS). K088 generation data reported in the 1995 BRS were used instead.

[33] Background Document to Establish the Effective Date (March 2000, Section II, Required Capacity) in the docket for today's rule.

September 1998, therefore, several of the reported management practices (*i.e.*, off-site incineration, on-/off-site landfill, and off-site stabilization) did not meet the standard.

The baseline scenario assumes that of the 87,746 tons of spent aluminum potliner generated annually, 47,724 tons currently go to the Reynolds facility for treatment and Subtitle C disposal; 34,854 tons to the CWMNW facility for storage, and 5,170 tons are generated and treated on-site (non-commercially) using the Vortec technology at the Ormet facility. To establish the baseline management unit costs for the economic impact analysis, transportation costs were determined for each aluminum smelter.

b. Cost Results. As stated above, because this rule only modifies the treatment standard for cyanide and establishes a treatment standard for fluoride, the Agency believes that this rule does not impose significant incremental treatment costs associated with treating K088. EPA has estimated transportation, permitting, and treatment costs for K088. Incremental annual treatment costs attributable to today's proposed rule range from $12.4 million under Scenario 1 to $36.8 million under Scenario 2. Capacity currently exists at the CWMNW to treat all stored K088 to current treatment standards, therefore, costs of storage are not included in cost estimates. [34] Transportation and permitting costs are estimated to range from $4.5 million to $11.8 million. EPA previously estimated treatment costs between $6.4 million and $42 million for the LDR Phase III final rule. 61 FR 15566,15591(April 8, 1996). EPA notes that new K088 treatment technologies are currently being developed that may significantly lower K088 treatment costs nationally. [35] EPA does not believe that this proposed rule will create barriers to market entry for firms wishing to provide alternative treatment capacity for spent aluminum potliner. Estimated economic impacts reflect direct expenditures to construct using Vortec and do not reflect the full costs of compliance.

EPA has also estimated the potential value of the fluoride-rich baghouse dust that is a by-product of the Vortec process. In 1994, approximately 73% of reported fluorspar consumed in the U.S. was used in the production of hydrofluoric acid; 10% as a fluxing agent in steelmaking; and, 17% in aluminum fluoride manufacture, primary aluminum production, glass manufacture, enamels, welding-rod coatings, and other miscellaneous end uses or products. Fluorspar prices are driven to a large extent by activities in China, including major increases in Chinese exports and the resulting competition between Chinese exporters and the introduction of Chinese export quotas and license fees. The average U.S. Gulf port price per ton, dry basis, for acid grade fluorspar is $122. The current licensing fee for Chinese (acid grade) fluorspar is $39. This price per ton represents the average delivered price of Chinese, Mexican, and South African acid grade at Gulf port.

About 90,000 tons of K088 waste were reported managed in the U.S. in 1997. The estimated cost per ton of the Vortec system (excluding permitting prices) ranges from $483 to $693. The Agency has assumed that this estimated treatment cost per ton includes both the generation cost of fluoride-rich material, as well as cyanide removal. The Agency does not have data to isolate the cost of cyanide removal; this cost is included in the overall treatment cost using the Vortec process. Annual cost impacts of the proposed rule were estimated to range from about $12 million to $37 million in aggregate for all facilities. About 5,250 tons of fluoride-rich material (assuming 100% of the fluoride baghouse dust is marketed as fluorspar) are generated annually in the U.S. Based upon the $122 price per ton for acid grade fluorspar, the resulting estimated value of the fluoride-rich baghouse dust is $640,500.

c. Economic Impact Results. To estimate potential economic impacts resulting from today's proposed rule, EPA has used first order economic impact measures such as the estimated incremental management unit costs of today's final rule as a percentage of affected firms' sales and/or revenues. Individual facilities were considered in the analysis. Annual sales for each facility were estimated from overall industry production data and industry capacity. Total industry capacity estimates were taken from USGS data. Industry production divided by industry capacity determined the overall capacity utilization. Sales for each facility were approximated assuming that they each produced aluminum at this capacity utilization rate of approximately 88 percent. When the annual costs of regulation are less than one percent of a firms annual sales or revenues, this analysis presumes that the regulation does not pose a significant economic impact on the affected facilities absent information to the contrary. In 1997, U.S., primary aluminum production was an estimated 4.0 million metric tons of aluminum at an average market price of $1,542 per ton yielding total sales of $6.1 billion.[36] The $36.8 million high estimate of the incremental treatment cost estimate represents only 0.6 percent of the total value of the aluminum sold by primary aluminum producers. It is likely, as discussed, that treatment costs will decrease as new firms develop commercial technologies for K088. As a result, this proposed rule will not pose a significant economic impact on primary aluminum producers in the United States. More detailed information on this estimate can be found in the economic assessment placed into today's docket.

d. Benefits Assessment. EPA has not conducted a quantitative assessment of actual benefits from this proposed rule. Because today's proposed rule promulgates a revised treatment standard for cyanide and establishes a treatment standard for fluoride in K088, the Agency believes that there may be a reduction in the levels of cyanide and fluoride in leachate, which may reduce human health risks in the event of a landfill liner failure and subsequent actual exposure by any nearby populations.

Since the proposed rule is technology-based (and not risk-based) the Agency has not conducted a data collection and analysis of actual cyanide

[34] Chemical Waste Management has received approximately 30,000 tons of K088 to-date, of which approximately 10,000 tons have already been treated. Further, Chemical Waste Management continues to receive 2,000 tons of additional K088 per month, while treating 5,000 tons of K088 per month. Net effect is a 3,000 ton per month reduction in stored K088. Personal communication with Steve Seed, Chemical Waste Management, and Linda Martin U.S.E.P.A., January 5, 2000.

[35] For example, previously Reynolds Metals Company has provided data indicating that the treatment of disposal cost of their process, though variable depending on a series of factors, is between $200 and $500 per ton. Personal Communication with Jack Gates, Vice-President, Reynolds Metals Company, September 28, 1994 as cited in Regulatory Impact Analysis of the Phase III Land Disposal Restrictions Final Rule, U.S. Environmental Protection Agency, Office of Solid Waste, February 15, 1996. Recently, Waste Management has quoted treatment and disposal charges at $160 per ton for treatment capacity now being developed at its Arlington, Oregon facility. Letter from Mitchell S. Hahn, Manager, Environmental Health and Safety, Waste Management Inc. to Paul A. Borst, Economist, USEPA, Office of Solid Waste, June 4, 1998. The Waste Management treatment and disposal charge is determined by subtracting the $85 storage price from a new customer price of $245 per ton. Transportation costs are not factored into this estimate. Of the $160 per ton treatment and storage cost, $80 per ton is attributable to treatment and $80 is attributable to disposal. Personal Communication with Mitch Hahn, Chemical Waste Management, and Paul Borst, U.S.E.P.A. August 13, 1998.

[36] Mineral Commodity Summaries 1999, U.S. Department of the Interior, U.S. Geological Survey.

contamination. However, the Agency has reviewed the available actual damage incidents with respect to the potential for spent aluminum potliner to release free cyanide, and cyanide's mobility and persistence following release. Specifically, the July 7, 1980 background document for the original spent aluminum potliner (K088) listing identified a damage case involving Kaiser Aluminum's Mead Works. Kaiser's facility is situated 150 feet above the Spokane aquifer which is used for private wells and drains into the Little Spokane River. Leachate from a lagoon containing potliners and sludge leached through the ground and contaminated the aquifer with cyanide. Eighteen wells were contaminated, some having cyanide levels in excess of 1,000 ppb. Kaiser had to provide alternative sources of drinking water to the affected owners and upgrade and seal the leaking lagoon.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the reasons stated above, in the estimated costs discussion of section X.A.2, the Agency does not believe that today's proposed rule will have a significant impact on a substantial number of small entities. The overall economic impact of today's proposed rule to promulgate revised treatment standards for total and amenable cyanide and establish a treatment standard for fluoride in spent aluminum potliner results in annual incremental costs ranging from $12.4 million to $36.8 million.

The proposed rule will affect an estimated 22 aluminum smelting companies. Of the companies in question, 21 are expected to incur costs. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: a small business that has less than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. No more than one facility is estimated to be small according to the Small Business Administration definition for small for SIC 3334 (Primary Production of Aluminum). After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that the preliminary estimate of the impact on affected facilities indicates compliance costs may exceed 1% of sales for this facility. The overall impact to the entire affected population of facilities is expected to range from 0.0 to 1.9 percent of sales, however, only under the assumption that the only K088 management facility will be the Reynolds facility in Arkansas.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA has sought data to determine available treatment technologies for establishment of treatment standards for cyanide and fluoride, as well as available markets for recycled K088.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts. More information on this analysis can be found in the background document ''Economic Assessment for Revised LDR Treatment Standards for Spent Aluminum Potliner (K088)'' placed in the public docket.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more in the aggregate to either State, local, or tribal governments or the private sector in one year. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because this is not an economically significant regulatory action as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency has concluded this because this rulemaking proposes treatment standards for hazardous constituents in spent aluminum potliner that minimizes both short-term and long-term threats to human health and the environment. The environmental health risks or safety risks addresses by this action do not have a disproportionate effect on children.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed the results of early life exposure to K088 waste or its regulated constituents of concern, e.g., cyanide, fluoride, arsenic, and polycyclic aromatic hydrocarbons.

E. Environmental Justice Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule covers K088 spent potliner wastes from primary aluminum operations. It is not certain whether the environmental problems addressed by this rule could disproportionately effect minority or low income communities, due to the location of primary aluminum operations. Because today's proposed rule establishes treatment standards for K088 being land disposed, the Agency does not believe that today's rule will increase risks from K088. It is, therefore, not expected to result in any disproportionately negative impacts on minority or low income communities relative to affluent or non-minority communities.

F. Paperwork Reduction Act

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–120 (ICR No. 1573, Part B Permit Application); 2050–120 (ICR 1571, General Facility Standards); 2050–0028 (ICR 261, Notification to Obtain an EPA ID); 2050–0034 (ICR 262, Part A Permit Application); 2050–0039 (ICR 801, Hazardous Waste Manifest); 2050–0035 (ICR 820, Generator Standards); and 2050-0024 (ICR 976, Biennial Report).

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. Existing determination methods are employed for the analysis of cyanide in the treated waste and fluoride in the deionized water leachate from the treated waste. As stated above, today's action proposes a revised treatment standard for fluoride in nonwastewaters, based on a recognized version of the toxicity characteristic leaching procedure, ASTM Method D3987–85 (1999) Standard Test Method for Shake Extraction of the Solid Waste With Water. This is a consensus method.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input to the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Aluminum potliners are not currently generated or treated on any known Indian tribal lands. Today's proposal does not create a mandate on State, local or tribal governments. The proposal would not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

I. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implication.'' ''Policies that have federalism implication'' is defined in the Executive Order to include regulation that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by State and local government, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also when EPA transmits a draft final rule with federalism implication to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

I. In part 260:

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—[Amended]

2. Section 260.10 is amended by revising the definition of ''incinerator'' and adding the definition of ''K088 vitrification unit'' in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

Incinerator means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, carbon regeneration unit, or K088 vitrification unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

* * * * *

K088 vitrification unit means an enclosed device in which K088 waste and other materials are introduced into a pool of molten glass and whereby waste components that are dissolved or suspended in the molten matrix are subsequently entrapped or chemically bound in the matrix upon cooling to form a solid mass. Such units are classified as other thermal treatment units.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

II. In part 261:

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraphs, (a)(20) and (a)(21) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(20) Glass frit generated by the vitrification of K088, provided the frit is recycled legitimately and is not accumulated speculatively (as defined in § 261.1(c)(8)) and meets the requirements of § 268.40 of this chapter.

(21) Fluoride-rich baghouse dust generated by the vitrification of K088, provided the dust is recycled legitimately as an ingredient or for reclamation by introduction into industrial processes and is not land disposed (i.e., placed on the land) before doing so and is not accumulated speculatively (as defined in § 261.1(c)(8)) of this chapter.

* * * * *

3. Section 261.6 is amended by revising the last sentence of paragraph (c)(1) to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) * * * (The recycling process itself is exempt from regulation except as provided in § 261.6(d) and except that K088 vitrification units are not exempt from regulation.)

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

II. In part 268:

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.40 is amended by revising the entry for K088 in the table entitled Treatment Standards For Hazardous Wastes and adding footnote 12 to read as follows:

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS[2] number	Concentration in mg/L[3], or technology code[4]	Concentration in mg/kg[5] unless noted as mg/L TCLP, or technology code
*	*	*	*	*	*
K088	Spent potliner from primary aluminum reduction.	Acenaphthalene	83–32–9	0.059	3.4
		Anthracene	120–12–7	0.059	3.4
		Benzo(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Benzo(b)fluoranthene	205–99–2	0.11	6.8
		Benzo(k)fluoranthene	207–08–9	0.11	6.8
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Fluoranthene	206–44–0	0.068	3.4
		Indeno(1,2,3,-c,d)pyrene	193–39–5	0.0055	3.4
		Phenanthrene	85–01–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Antimony	7440–39–3	1.9	1.15 mg/L TCLP
		Arsenic	7440–38–2	1.4	26.1 mg/kg
		Barium	7440–39–3	1.2	21.0 mg/L TCLP
		Beryllium	7440–41–7	0.82	1.22 mg/L TCLP
		Cadmium	7440–43–9	0.69	0.11 mg/L TCLP
		Chromium (Total)	7440–47–3	2.77	0.60 mg/L TCLP
		Lead	7439–92–1	0.69	0.75 mg/L TCLP
		Mercury	7439–97–6	0.15	0.025 mg/L TCLP
		Nickel	7440–02–0	3.98	11.0 mg/L TCLP
		Selenium	7782–49–2	0.82	5.7 mg/L TCLP
		Silver	7440–22–4	0.43	0.14 mg/L TCLP
		Cyanide (Total)[7]	57–12–5	1.2	1.4 mg/kg
		Cyanide (Amenable)[7]	57–12–5	0.86	1.4 mg/kg
		Fluoride	16984–48–8	35	2.7 mg/L Deionized TCLP[12]
*	*	*	*	*	*

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts

and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW 846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

* * * * *

[12] Fluoride extraction must be performed using ASTM Method D3987–85(1999) Standard Test Method for Shake Extraction of Solid Waste with Water.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

4. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
[date of final signature].	Treatment Standards for Hazardous Waste K088	*Federal Register* page numbers.	*[date of signature]*
*	*	*	*

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
[date of final signature].	Prohibition on land disposal of K088 wastes, and prohibition on land disposal of radioactive waste mixed with K088 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m).	*[date of publication of final rule]* [FR page numbers].
*	*	*	*

* * * * * * *

[FR Doc. 00–16965 Filed 7–11–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6732–9]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Delaware. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before August 11, 2000.

ADDRESSES: Mail written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. You can examine copies of the materials submitted by Delaware during normal business hours at the following locations: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254; or Department of Natural Resources & Environmental Control, Division of Air & Waste Management, 89

Kings Highway, Dover, DE 19901, Phone number: 302–739–3689.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe at the above address and phone number (215) 814–5454.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: June 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–17346 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168, CS Docket No. 98–120, FCC 00–224]

Service Rules for the 746 Through 764 and 776 Through 794 MHz Bands, Carriage of the Transmission of Digital Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document solicits comment on various aspects of the spectrum clearance process for the 746–764 and 776–794 MHz (700 MHz) band. First, the document seeks comment on cost-sharing rules. Second, the document requests comment on the Commission's review of possible three-way voluntary relocation agreements to expedite clearing of the 700 MHz band. Third, the document invites comment on ''secondary auctions.'' Finally, the document invites comment whether incumbent broadcasters and new 700 MHz licensees should be permitted to share spectrum, and on whether the standards the Commission adopts for the channel 59–69 band should apply to incumbents on channels 58 and lower. The action is intended as a method of creating a comprehensive record, representing as many varying viewpoints as possible, upon which to base decisions in this proceeding.

DATES: Submit comments on or before August 16, 2000; submit reply comments on or before September 15, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rabinovitz, 202–418–0689.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rule Making (FNPRM) portion of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99–168 and CS Docket No. 98–120, FCC 00–224, adopted June 22, 2000, and released June 30, 2000. The Memorandum Opinion and Order (MO&O) portion of the decision is summarized elsewhere in this edition of the **Federal Register**. The complete text of the MO&O/FNPRM is available on the Commission's Internet site at www.fcc.gov. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street SW, Washington, DC. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the FNPRM

1. The Commission, through the FNPRM, solicits comment on four aspects of the spectrum clearance process initiated in the First Report and Order (First R&O) in this proceeding (65 FR 3139, January 20, 2000). The First R&O adopted a band plan and associated service rules for the assignment of licenses in 30 megahertz of the 700 MHz band (747–762 and 777–792 MHz). In the First R&O, the Commission concluded that it would consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees that would compensate incumbents for clearing the band or otherwise accommodating the new licensees. In the FNPRM, the Commission seeks comment on other potential mechanisms to further the goals of transitioning the 700 MHz band to wireless services and accelerating the transition to digital television.

2. The FNPRM first invites comment on whether to adopt cost-sharing rules that would spread the cost of clearing the 700 MHz band for use by the new licensees among 700 MHz licensees that benefit from the process. Specifically, the Commission invites comment on the following issues: (1) Would cost-sharing rules would expedite clearing the 700 MHz band for use by the new licensees and the transition to DTV by incumbent broadcasters, or should, as the Commission tentatively concludes, cost-sharing arrangements should be left to negotiations among successful auction bidders? and (2) If the Commission adopts cost-sharing rules, how should the Commission calculate the costs that benefiting 700 MHz licensees would be required to pay. The Commission also tentatively concludes that if it were to adopt cost-sharing rules, licensees of the public safety spectrum would not be required to pay a share of the clearing costs, and invites comment on this tentative conclusion.

3. The FNPRM solicits comment on whether there are mechanisms other than cost-sharing rules that the Commission could implement to facilitate voluntary band clearing. In particular, the Commission seeks comment on whether there are market-oriented mechanisms that might be more efficient to facilitate voluntary band clearing than the negotiation of individual band clear agreements by each 700 MHz licensee and each incumbent.

4. One alternative on which the FNPRM solicits comment is three-way voluntary transition agreements that would provide for TV incumbents on television channels 59–69 to relocate to lower band TV channels that, in turn would be voluntarily cleared by the lower band TV incumbents. The Commission seeks comment on whether and under what conditions such agreements should be approved. The Commission, in the FNPRM seeks comment on how the Commission should evaluate possible loss of service in reviewing specific requests for voluntary relocations, and on whether the Commission should consider steps other than the review and approval or disapproval of voluntary agreements.

5. The FNPRM also invites comment on the use of ''secondary auctions'' in conjunction with this or future auctions in the band as another tool for facilitating band clearing agreements. In a secondary auction, competitive bidding would be used to determine the price that would be paid by 700 MHz licensees to TV incumbents who agree to clear their channels in the 700 MHz band. The FNPRM seeks comment on this alternative, on whether such an auction should be conducted on a private basis, whether the Commission has legal authority to conduct a secondary auction, and, if a secondary auction were to be conducted by the Commission, how it should be organized.

6. Finally, the Commission, through the FNPRM solicits comment on whether additional proposals should be considered to accelerate the digital television transition. For example, should the Commission allow incumbent broadcasters on television

channels 59–69 and 700 MHz new service providers to share spectrum in time and/or bits? Lastly, the FNPRM seeks comment on whether any of the enhanced band clearing proposals discussed in the FNPRM for incumbents on channels 59–69 should also apply to incumbents on channels 58 and lower.

Initial Regulatory Flexibility Analysis

7. This is a synopsis of the Initial Regulatory Flexibility Act Statement in the Further Notice of Proposed Rulemaking (FNPRM). The full text of Initial Regulatory Flexibility Act Statement may be found in Appendix C of the full Memorandum Opinion and Order and NPRM.

8. As required by the Regulatory Flexibility Act (RFA)(*see* 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)) the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by certain policies and rules proposed in the FNPRM. Pursuant to the Consolidated Appropriations Act, 2000, the requirements of the RFA do not apply to the rules and competitive bidding procedures governing assignments to commercial entities of frequencies in the 746 MHz to 806 MHz band. Accordingly, the IRFA does not include an analysis of the possible economic impacts that might result from such rules and procedures. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the Memorandum Opinion and Order and FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for and Objectives of the Proposed Rules

9. The Congressional plan set forth in Sections 336 and 337 of the Act and in the 1997 Budget Act is to transition the 700 MHz band from its current use for broadcast services to commercial use and public safety services as expeditiously as possible. In the FNPRM, the Commission moves towards this goal by seeking comment on whether mechanisms other than those adopted in the First R&O might further facilitate the voluntary clearing of TV incumbents from the band. Further discussion of the need for and objectives of the proposed rules can be found at paragraph 2 of the full text of the IRFA.

B. Legal Basis

10. This action is authorized under Sections 1, 4(i), 7, 10, 301, 303, 307, 308, 309(j), 309(k), 316, 331, 332, 336, 337 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 301, 303, 307, 308, 309(j), 309(k), 316, 331, 332, 336, 337, and 534, and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Section 213.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a ''small business concern'' is one which: (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). According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

12. The policies and rules proposed in the FNPRM discussed in the IRFA would affect all small entities that seek to acquire licenses in wireless services in the 698–746 MHz band (''lower 700 MHz band'') currently used for television broadcasts on Channels 52–58, or that are incumbent television broadcasters.

13. The Commission has not yet developed a definition of small entities applicable to the lower 700 MHz band. Therefore, the applicable definition is the one under the Small Business Administration rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. However, no channelization plan or licensing plan has been proposed or adopted for the lower 700 MHz band. Therefore, the number of small entities that may apply to acquire licenses in the lower 700 MHz band is unknown.

14. The SBA defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. There were 1,509 television stations operating in the nation in 1992. In 1992, there were 1,155 television station establishments that produced less than $10.0 million in revenue (76.5 percent). As of May 31, 1998, official Commission records indicate that 1,579 full power television stations, 2089 low power television stations, and 4924 television translator stations were licensed. We conclude that a similarly high percentage of current television broadcasting licensees are small entities (76.5 percent).

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

15. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of the FNPRM. If the Commission later finds a need to impose new reporting, recordkeeping or other compliance requirements as a result of deciding to adopt any of the proposals contained in the FNPRM, a period of public and agency comment will be established at that time.

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

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

17. The Commission seeks comment on the economic impact that the proposals described in the FNPRM might have on small entities. With the exception of the cost-sharing rules, the proposals on which the FNPRM seeks comment are based on the voluntary participation of both new 700 MHz licensees and incumbent television broadcasters. Cost-sharing rules, if adopted, would require those new 700 MHz licensees that benefit from a clearing agreement with a TV incumbent to share the costs of that agreement. Insofar as small entities could not afford to enter into clearing agreements without the costs being shared by other 700 MHz licensees, the cost-sharing rules would provide a positive economic benefit to small entities. To the extent that other licensees would enter into clearing agreements without the costs being shared by small entities, thereby giving the small entities a ''free ride,'' cost-sharing rules would produce a significant economic impact on small entities. Finally, to the extent that small entities would prefer not to enter into clearing agreements but to wait until the incumbent TV licensee was required to clear the band by statute, and cost-sharing rules would require small entities to share the costs of clearing agreements, cost-sharing rules would also produce a significant economic impact on small entities. As a general matter, cost-sharing rules must apply to all licensees in order for them to operate as intended. Moreover, without a channelization plan for the lower 700 MHz band, it is not possible at this time to determine whether the Commission could exempt some or all small entities from any cost-sharing rules adopted, or otherwise minimize the impact on small entities. One significant alternative the Commission is considering is not to adopt any cost-sharing rules.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

Ordering Clauses

19. Notice is hereby given of the proposed regulations described in the FNPRM , and that comment is sought on these proposals.

20. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the MO&O and FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

[FR Doc. 00–17649 Filed 7–11–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG27

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Morro Shoulderband Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 1,039 hectares (2,566 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in San Luis Obispo County, California. If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until September 11, 2000. Public hearing requests must be received by August 28, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

2. You may hand-deliver written comments to our Ventura Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to FW1vees_MorrosnailCH@r1.fws.gov. For directions on how to submit electronic filing of comments, see **Public Comments Solicited** section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband snail was first described as *Helix walkeriana* by Hemphill (1911) based on collections made ''near Morro, California.'' He also described a subspecies, based on sculptural features of the shell, *Helix walkeriana, Helix* var. *morroensis,* that was collected ''near San Luis Obispo City'' (Roth 1985). The Morro shoulderband snail is also commonly known as the banded dune snail and belongs to the Class Gastropoda and Family Helminthoglyptidae.

The shell of the Morro shoulderband snail is slightly translucent (clear) and has 5–6 whorls. Its dimensions are 18 to 29 millimeters (mm) (0.7 to 1.1 inches (in.)) in diameter and 14 to 25 mm (0.6 to 1.0 in.) in height. The Morro shoulderband snail can be distinguished from the Big Sur shoulderband snail (*Helminthoglypta umbilicata*), another

native snail in the same area, by its more globose (globe shaped) shell shape and presence of incised (deeply cut) spiral grooves (Roth 1985). The shell of the Big Sur shoulderband snail tends to be flatter and shinier. The brown garden snail (*Helix aspersa*) also occurs in Los Osos with the Morro shoulderband snail and has a marbled pattern on its shell, whereas the Morro shoulderband snail has one narrow dark brown spiral band on the shoulder. The Morro shoulderband's spire is low-domed, and half or more of the umbilicus (the cavity in the center of the base of a spiral shell that is surrounded by the whorls) is covered by the apertural (small opening) lip (Roth 1985).

The Morro shoulderband snail is found only in western San Luis Obispo County. At the time of its addition to the List of Endangered and Threatened Wildlife on December 15, 1994 (59 FR 64613), the Morro shoulderband snail was known to be distributed near Morro Bay. Its currently known range includes areas south of Morro Bay, west of Los Osos Creek and north of Hazard Canyon. Historically, the species has also been reported near the city of San Luis Obispo (type locality for ''*morroensis*'') and south of Cayucos (Roth 1985).

The Morro shoulderband snail occurs in coastal dune and scrub communities and maritime chaparral. Through most of its range, the dominant shrub associated with the snail's habitat is mock heather (*Ericameria ericoides*). Other prominent shrub and succulent species are buckwheat (*Eriogonum parvifolium*), eriastrum (*Eriastrum densifolium*), chamisso lupine (*Lupinus chamissonis*), dudleya (*Dudleya* sp.), and in more inland locations, California sagebrush (*Artemisia californica*) and black sage (*Salvia mellifera*) (Roth 1985).

Away from the immediate coast, immature scrub in earlier successional stages may offer more favorable shelter sites than mature stands of coastal dune scrub. The immature shrubs provide canopy shelter for the snail, whereas the lower limbs of larger older shrubs may be too far off the ground to offer good shelter. In addition, mature stands produce twiggy litter that is low in food value (Roth 1985).

No studies or documented observations exist on the feeding behaviors of the Morro shoulderband snail. Hill (1974) suggested that the snail probably feeds on the fungal mycelia (webs or mats of non-reproductive fungal strands) growing on decaying plant litter. The Morro shoulderband snail is not a garden pest and is essentially harmless to gardens (Chambers 1997).

Sarcophagid flies (family of flies that rely on a host to complete its life-cycle) have been observed to parasitize the Morro shoulderband snail. Empty puparia (''cases'' left behind by adult flies emerging from pupae) were observed in empty snail shells by Hill (1974), Roth (1985), and Kim Touneh (Service, pers. comm. 1997). Hill (1974) and Roth (1985) suggested that mortality from infestations of larvae of this parasitic fly often occurs before the snails reach reproductive maturity. The flies may have a significant impact on the population of the snail (Roth 1985). Seasonal drought and/or heat may contribute to the snail's egg mortality (Roth 1985). Based on shell examination, Roth (1985) also suggested that rodents may prey on the snail.

The Morro shoulderband snail is threatened by destruction of its habitat due to increasing development and by degradation of its habitat due to invasion of nonnative plant species (*e.g.,* veldt grass (*Ehrharta calycino*)), structural changes to its habitat due to maturing of dune vegetation, and recreational use (*e.g.,* heavy off-highway activity). In addition to the known threats, possible threats to the snail include competition for resources with the nonnative brown garden snail (although no assessment has been made of possible dietary overlap between the species); the small and isolated nature of the remaining populations; the use of pesticides (including snail and slug baits); and the introduction of nonnative predatory snails.

Previous Federal Action

We entered into a contract with the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails. A final report dated August 25, 1975, contained data indicating that several of the snails studied could be considered candidates for listing as threatened or endangered species. On April 28, 1976, we proposed endangered or threatened status for 32 land snails in the **Federal Register** (41 FR 17742). This proposal included the Morro shoulderband snail (under the common name ''banded dune snail'') as endangered. However, we withdrew the proposed rulemaking on December 10, 1979 (44 FR 70796), because of the 1978 amendments to the Act, which required the withdrawal of proposals over 2 years old.

In 1984, we undertook a status review of the snail, which ended in a report by Roth (1985). Based on that report, we included the Morro shoulderband snail as a category one species in the Animal Notices of Review of May 22, 1984 (40 FR 675); January 6, 1989 (54 FR 554); and November 21, 1991 (56 FR 58820). A category one species is one on which we have sufficient information to support a listing.

On December 23, 1991, we published a proposed rule in the **Federal Register** (56 FR 66400) to list five plants and the Morro shoulderband snail as endangered. We reopened the comment period on June 8, 1992 (57 FR 24221). On December 15, 1994, we published a final rule adding the Morro shoulderband snail and four plants to the List of Endangered and Threatened Wildlife as endangered species (59 FR 64613). We published a final recovery plan in September 1998.

At the time of listing, we concluded that designation of critical habitat for the Morro shoulderband snail was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely result in an increased threat of vandalism or collection of the species. However, we have determined that instances of vandalism have not increased since the listing of the Morro shoulderband snail, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational, potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas were already identified in the recovery plan as the focus of our recovery efforts for the Morro shoulderband snail.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (Southwest Center for Biological Diversity v. U.S. Fish and Wildlife, CIV 99–1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit

pursuant to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives some protection from destruction or adverse modification through required consultation under section 7 of the Act. See ''Section 7 Consultation'' below. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits.

Methods

In determining areas that are essential to conserve the Morro shoulderband snail, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the recovery plan, regional Geographic Information System (GIS) vegetation coverages, and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and ecological distributions of a species.

The primary constituent elements of critical habitat for the Morro shoulderband snail are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The areas we are proposing to designate as critical habitat provide some or all of the primary constituent elements, which are: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, native coastal dune scrub vegetation. This vegetation is typically represented, but not exclusively, by mock heather, buckwheat, eriastrum, chamisso lupine, dudleya, and in more inland locations, California sagebrush and black sage. Some of the habitat in the proposed units could be improved through habitat rehabilitation or improved management (*e.g.,* removal of nonnative species).

Criteria Used To Identify Critical Habitat

In an effort to map areas that have the features essential to the conservation of the species, we used data on known Morro shoulderband snail locations and conservation planning areas that were identified in the final recovery plan (Service 1998) as essential for the recovery of the species. All of the proposed critical habitat areas are occupied.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for Morro shoulderband snail conservation. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. The Morro shoulderband snail is known to occur on State, county, and private lands. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal and private lands that are covered by an existing operative HCP and an executed implementation agreement (IA) for Morro shoulderband snail under Section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and therefore are not proposed for inclusion in critical habitat since then do not meet the definition of critical habitat in section 3(5) of the Act.

Critical habitat designation is not intended to discourage the development of HCPs to protect essential habitat areas for the Morro shoulderband snail on non-Federal lands. To the contrary, we consider HCPs to be one of the most important methods through which non-Federal landowners can help conserve listed species while resolving potential land-use conflicts. We provide technical assistance and work closely with applicants throughout development of

HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by land ownership is shown in Table 1. Proposed critical habitat includes Morro shoulderband snail habitat throughout the species' existing range in the United States (*i.e.,* San Luis Obispo County, California). Lands proposed are under private and State and local ownership. The species is not known to occur or to have historically occurred on Federal lands. Lands proposed as critical habitat have been divided into three Critical Habitat Units. Brief descriptions of each unit, and our reasons for proposing it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries. Not all the areas within those broad boundaries, such as cities, towns, or other developments, will be considered critical habitat since these areas do not contain habitat considered essential to the survival of the Morro shoulderband snail.]

County	Federal land	Local/state land	Private land	Total
San Luis Obispo	N/A	790 ha (1,951 ac)	249 ha (615 ac)	1,039 ha. (2,566 ac).

Unit 1: Morro Spit and West Pecho

Unit 1 encompasses areas managed by Montana de Oro State Park (Dunes Natural Preserve) and the City of Morro Bay (north end of spit), including the length of the spit and the foredune areas extending south toward Hazard Canyon. The unit is occupied by the Morro shoulderband snail, and it provides dune scrub habitat for the species. The spit's windward side and its north end are nonvegetated; patches of vegetation occur along its leeward side on Morro Bay. The West Pecho portion of this unit lies to the east of the Morro Spit Conservation Planning Area and is bounded on the east by Pecho Road and the community of Los Osos. It extends north to the Bay and south to Hazard Canyon. Elevations range from sea level on the Bay to about 75 meters (m) (250 feet (ft)) along its southeastern edge. Vegetation associations include coastal dune scrub, with coastal sage scrub closer to Hazard Canyon. The California Department of Fish and Game owns an ecological reserve in this unit, which is managed cooperatively with adjoining State Park property. Privately owned lands occur to the northeast in the community of Los Osos, but no private lands are included in this unit and are not reflected in the approximate area of the critical habitat proposed. Approximately 676 hectares (ha) (1,670 acres (ac)) occur on State land, and 65 ha (160 ac) occur on local government land.

Unit 2: South Los Osos

Unit 2 is bounded on the north and east by residential development in the community of Los Osos and agricultural fields. The area on the lower slopes of the Irish Hills, where the vegetation is composed of maritime chaparral, is currently occupied by the Morro shoulderband snail and is considered essential. We are designating approximately 130 ha (320 ac) of this area as critical habitat. This area is privately owned.

Unit 3: Northeast Los Osos

The Northeast Los Osos Critical Habitat Unit includes undeveloped areas between Los Osos Creek and Baywood Park and is divided by South Bay Boulevard. Its elevation range is from sea level to about 30 m (100 ft). Vegetation is dominated by variants of coastal sage and dune scrub, with scattered stands of manzanita (*Arctostaphylos* spp.) and coast live oak (*Quercus agrifolia*). The Morro shoulderband snail is known to occupy this unit. This unit includes the State- and county-owned Elfin Forest Preserve, portions of Morro Bay State Park, and privately owned lands. The Los Osos Center, Hord Residential, and MCI/Worldcom HCPs fall within the unit boundaries, but areas where take has been authorized are not being proposed for critical habitat. Approximately 49 ha (121 ac) of proposed critical habitat in this unit occur on State land, and 119 ha (295 ac) occur on private land.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. In 50 CFR 402.02, ''jeopardize the continued existence'' (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed

critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Under section 7(a)(2), if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.,* from the Federal Highway Administration (FHA), Environmental Protection Agency (EPA), or Federal Emergency Management Agency (FEMA)), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Morro shoulderband snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that result in excavation, mechanized land clearing, or uncontrolled burning of coastal dune scrub vegetation; and

(2) Activities that could lead to the introduction of exotic species into occupied Morro shoulderband snail habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may ''result in the destruction or adverse modification of''critical habitat with the requirements for actions that may ''jeopardize the continued existence of'' a listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the Morro shoulderband snail is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. When critical habitat is designated in unoccupied areas, the designation could result in an increase in regulatory requirements on Federal agencies; however, all of the proposed critical habitat for the Morro shoulderband snail is occupied.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. The actions we consult on include, but are not limited to:

(1) Activities conducted by the USACE (*e.g.,* ordnance removal);

(2) Road construction and maintenance funded by the FHA; and

(3) Other activities funded or permitted by Federal agencies (e.g., EPA, FEMA).

Relationship to Habitat Conservation Plans

Several habitat conservation planning efforts have been completed within the range of the Morro shoulderband snail. The Los Osos Center HCP, Hord Residential HCP, and MCI/Worldcom HCP contributed funds toward the purchase and perpetual management of several acres to serve as conservation sites for the Morro shoulderband snail. Because the snail habitat preserved in these existing HCP planning areas will be managed for the benefit of the snail under the terms of the individual HCPs, no additional management considerations or protections are required for those lands. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the Morro shoulderband snail do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

HCPs currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Morro shoulderband snail, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the snail. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.,* counties, cities) and other parties will identify, protect, and provide appropriate management for those

specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the Morro shoulderband snail. Several HCP efforts are now under way for listed species in areas within the range of the Morro shoulderband snail in areas we propose as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. However, since these HCP are not completed these areas have been included in this proposed critical habitat designation. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Morro shoulderband snail should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, Eastside Federal Complex, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of Morro shoulderband snail habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designation of critical habitat for the Morro shoulderband snail, such as those derived from nonconsumptive uses (*e.g.,* hiking, camping, bird-watching, ''existence values,'' improved air quality, increased soil retention, and changes in administration *i.e.* maintenance of area).

In this proposed rule, we do not propose to designate critical habitat on non-Federal and private lands within the boundaries of an existing approved HCP with an executed IA for Morro shoulderband snail approved under section 10(a)(1)(B) of the Act because the existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the snail. We believe that such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat; or

(2) Designate as critical habitat reserves, preserves, and other conservation lands identified by approved HCPs on the premise that they encompass areas that are essential to conservation of the species within the HCP area and will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the Morro shoulderband snail is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the Morro shoulderband snail in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

We are also seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now under way within the range of the Morro shoulderband snail, and other listed and nonlisted species, in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Morro shoulderband snail:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is

issued, that the plan protects those areas essential to the conservation of the Morro shoulderband snail, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Office at phone number 805/644–1766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. Such requests must be made in writing and be addressed to the Field Supervisor of our Ventura Fish and Wildlife Office (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Morro shoulderband snail was listed as an endangered species in 1994. In fiscal years 1994 through 1999, we conducted nine formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the snail.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions

are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Morro shoulderband snail since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all of the proposed critical habitat occurs in occupied areas. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

TABLE 2.—IMPACTS OF MORRO SHOULDERBAND SNAIL LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation[1]
Federal Activities Potentially Affected[2]	Activities conducted by USACE (*e.g.* ordnance removal)	None.
Private or other non-Federal Activities Potentially Affected[3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Morro shoulderband snail habitat by mechanical, chemical, or other means (*e.g.,* grading, overgrazing, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Activities conducted by the USACE (*e.g.* ordnance removal);

(2) Road construction and maintenance funded by the FHA; and

(3) Other activities funded or permitted by Federal agencies (*e.g.,* EPA, FEMA).

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant

takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Morro shoulderband snail. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the Morro shoulderband snail.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Morro shoulderband snail imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. By making this definition and identification, we would not alter where and what federally sponsored activities may occur. However, having this information may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and plan public hearings, if requested, on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Morro shoulderband snail.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We determined that no Tribal lands are essential for the conservation of the Morro shoulderband snail because no Tribal lands support populations of snails or suitable habitat. Therefore, we are not proposing to designate critical habitat for the Morro shoulderband snail on Tribal lands.

References Cited

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Hemphill, H. 1911. Descriptions of some varieties of shells with short notes on the geographical range and means of distribution of land shells. Transactions of the San Diego Society of Natural History (1):99–108.

Hill, D.L. 1974. *Helminthoglypta walkeriana:* A rare and endangered land mollusc. Senior Project, California Polytechnic State University, San Luis Obispo. 21 pp.

Roth, B. 1985. Status survey of the banded dune snail, *Helminthoglypta walkeriana*. Unpublished report prepared for U.S. Fish and Wildlife Service, Sacramento, California. 27 pp. + figures.

U.S. Fish & Wildlife Service. 1998. Recovery plan for the Morro shoulderband snail and four plants from western San Luis Obispo County, California. U.S. Fish and Wildlife Service, Portland, Oregon. 75 pp.

Author

The primary authors of this document are Greg Sanders and Ron Popowski of our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Snail, Morro shoulderband (=Banded dune)'' under ''SNAILS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Snail, Morro shoulderband (=Banded dune).	*Helminthoglypta walkeriana*.	U.S.A. (CA)	NA	E	567	17.95(g)	NA
*	*	*	*	*	*	*	

3. Amend § 17.95 by adding new paragraph (f) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

Morro Shoulderband Snail (*Helminthoglypta walkeriana*)

1. Critical habitat units are depicted for San Luis Obispo County, California, on the map below.

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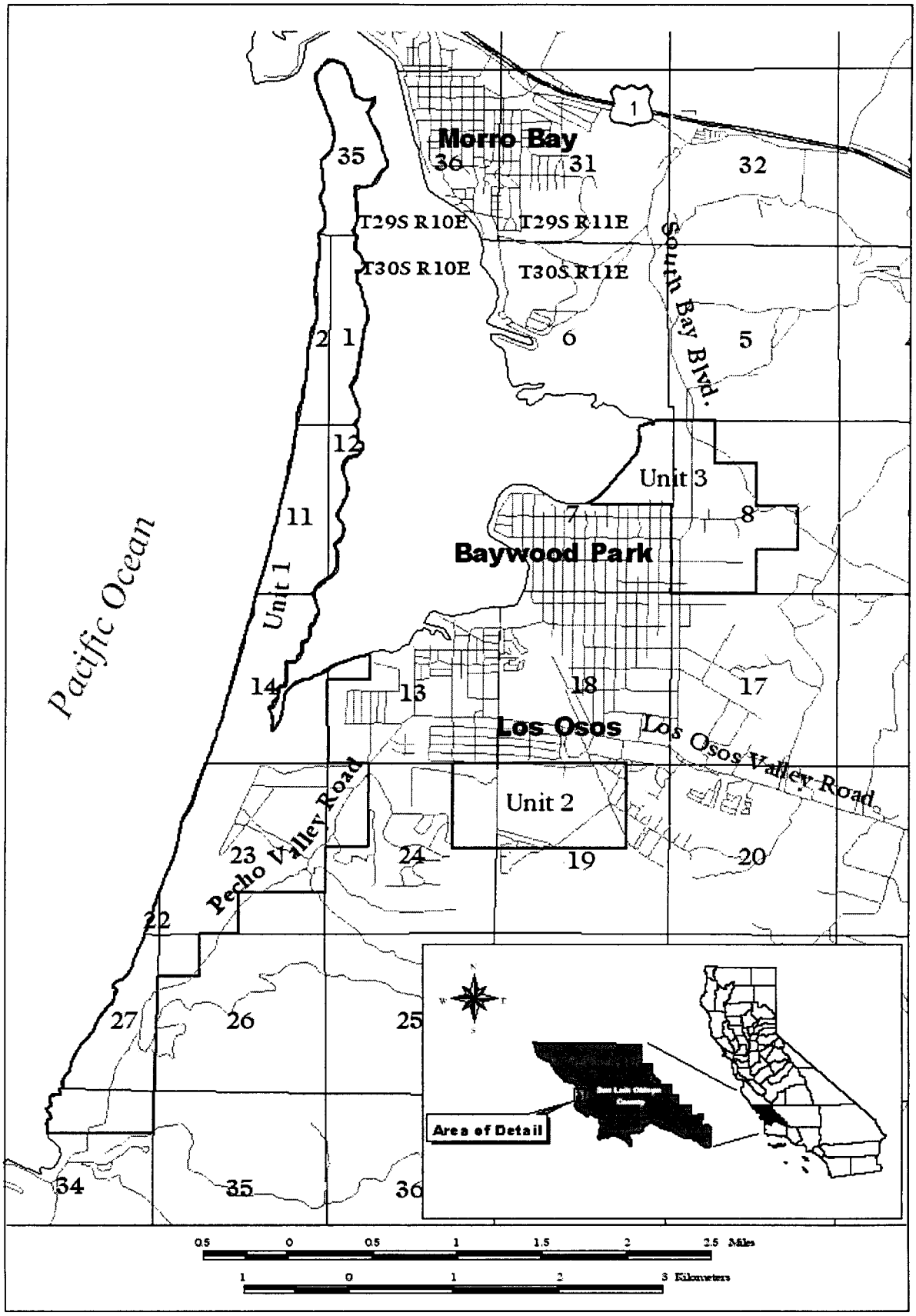

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Map Units 1 to 3: All located in San Luis Obispo County, California. Coastline boundaries are based upon the U.S. Geological Survey Morro Bay South 7.5

minute topographic quadrangle. Other boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Canada De Los Osos Y Pecho Y Islay Mexican Land Grant, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by us from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian.

Map Unit 1: T. 29 S., R. 10 E., all of section 35 above mean sea level (MSL); T. 30 S., R. 10 E. All portions of sections 1, 2, 11, 12, 14, 22, and 27 above MSL, SW¼NW¼ section 13 above MSL, W½NW¼ section 24, all of section 23 above MSL except S½SE¼, NW¼NW¼ section 26, N½N½ section 34.

Map Unit 2: T. 30 S., R. 10 E., E½NE¼ section 24; T. 30 S., R, 11 E., E¾N½ section 19.

Map Unit 3: T. 30 S., R. 11 E., All of NE¼ section 7 above MSL; in section 8, NW¼NW¼, S½NW¼, SW¼, and NW¼SE¼.

2. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements for the Morro shoulderband snail are the following: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, coastal dune scrub vegetation.

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aqueducts, railroads, airports, paved areas, and similar features and structures.

Dated: June 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–17257 Filed 7–11–00; 8:45 am]

BILLING CODE 3410–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG07

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Scutellaria montana (large-flowered skullcap) from Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify *Scutellaria montana* (large-flowered skullcap) from its present endangered status to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This proposed reclassification is based on the substantial improvement in the status of this species. Since listing, 22 additional sites have been discovered, and the total known number of individuals has increased from about 6,700 to more than 48,000. This proposal, if made final, would implement the Federal protection and recovery provisions for threatened plants as provided by the Act, to large-flowered skullcap. We are seeking data and comments from the public.

DATES: Comments from all interested parties must be received by September 11, 2000. Public hearing requests must be received by August 28, 2000.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address, by phone at 828/258–3939, Ext. 229, or by E-mail at Allen_Ratzlaff@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems usually from 30 to 50 centimeters (cm) (11 to 19 inches (in)) tall. The leaves are lanceolate (shaped like a lance-head, several times longer than wide, broadest above the base and narrowed to the apex) to ovate (egg-shaped, with the broader end at the base), on 1 to 2 cm (0.4 to 0.8 in) petioles (the stalk of a leaf that attaches it to the stem), with blades (the expanded portion of a leaf) 5 to 8 cm (2 to 3 in) long and 3 to 5 cm (1 to 2 in) wide. The leaf margins (the edge of the leaf) are crenate (rounded, tooth-like edges) to serrate (having sharp teeth pointing forward) and hairy on both surfaces. The inflorescence (the flowering part of a plant) is a terminal (at the end of the stalk), leafy-bracted (a ''modified'' leaf) raceme (simple flower), with or without paired lateral racemes at the base. The calyx (the outer part of the flower) is two-lobed with a ''cap'' just above the base of the upper lobe (characteristic of the genus *Scutellaria*). The corolla (petals) is relatively large, 2.6 to 3.5 cm (1 to 1.4 in) long, blue and white, and lacking a fleshy ridge (annulus) within the corolla tube near the top of the calyx. Flowering occurs from mid-May to early June, and fruits mature in June and early July.

Bridges (1984) stated, ''The genus *Scutellaria* can be easily recognized by its distinctive calyx, with a protrusion, or 'cap' on the upper lobe.'' *Scutellaria montana* could be confused with other species of *Scutellaria.* Bridges (1984) also listed some important characters of *Scutellaria montana*: (1) A terminal inflorescence; (2) a large corolla at least 2.5 cm (1 in) long; (3) tapering or truncate (ending abruptly) leaf bases, never cordate (heart shaped); (4) a midstem with at least some stipitate (short stem) glandular hairs; (5) no sessile (without a footstalk of any kind) glands on the upper leaf surface, (6) a fairly densely pubescent (hairy) lower leaf surface, often with glandular hairs; and (7) a corolla tube lacking an annulus within.

Dr. A. W. Chapman described *Scutellaria montana* in 1878. Since then, the taxonomy of *Scutellaria montana* has undergone a period of debate. Penland (1924) reduced the taxon to a variety of *Scutellaria serrata.* Leonard (1927) later reinstated the species, but he made no distinction between *Scutellaria pseudoserrata* and *Scutellaria montana* (Collins unpublished). Epling (1942) restored the taxon to full species status and clarified the questions regarding the taxonomic differences between *Scutellaria pseudoserrata* and *Scutellaria montana.*

In the field, *Scutellaria montana* is most likely to be confused with *Scutellaria pseudoserrata.* The two species have a similar range and habitat and are sometimes found growing together. *Scutellaria montana* is the only species of *Scutellaria* that lacks an annulus within the corolla tube. Further, *Scutellaria pseudoserrata* has transparent sessile glands on the upper leaf surface and hairs only on the veins and leaf margins. In contrast, *Scutellaria montana* has a fine, even-mixed glandular and nonglandular ''velvety'' pubescence on the upper and lower leaf surface. Two other skullcaps that can occur in the same region are *Scutellaria elliptica* and *Scutellaria ovata,* both of which have smaller flowers and branching inflorescences. *Scutellaria elliptica* tends to have leaf margins with rounded teeth and noticeably longer hairs on the leaf, and *Scutellaria ovata* has strongly cordate leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (Shea and Hogan 1998) observed bees (*Apiodea*) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and

hummingbirds occasionally visiting the plants.

Scutellaria montana is known from the southern portion of the Ridge and Valley Physiographic Province in Marion and Hamilton Counties in Tennessee; Dade, Floyd, Chattooga, Gordon, Catoosa, and Walker Counties in Georgia; and the Cumberland Plateau Province in Sequatchie, Marion, and Hamilton Counties in Tennessee.

According to Bridges (1984), the geological strata underlying the sites for *Scutellaria montana* include most of the major slope-forming formations of the region: shale, chert, limestone, and sandstone from Cambrian to Pennsylvanian in age. Most sites in Tennessee occur on the Upper Mississippian Pennington Formation and Lower Pennsylvanian sandstones and shales. Most of the sites in the Lookout Mountain portion of the Chickamauga-Chattanooga National Military Park are found on Fort Payne, St. Lewis, Warsaw, Monteagle, and Bangor Formations that underlie the Pennington Formations (McKerrow and Pyne 1993). The Georgia portion of the Ridge and Valley is underlain by Paleozoic rock such as sandstone, shales, and limestone (Lipps and DeSelm 1969). The Georgia sites are found on Mississippian Formations including Rome, Red Mountain, and Rockwood (Collins unpublished). Site elevations range from 189 meters (620 feet) to 562 m (1844 ft) above sea level.

All populations occur on colluvial soils over bedrock composed of shale, chert, or limestone. The soils are generally rocky, shallow, well-drained, and slightly acidic. Soil depth ranges from deep to a thin layer, no more than 3 cm (1.2 in) deep, over bedrock. In Georgia, the soil is generally stony, shaley, or cherty silt loam or silty clay loam ranging in depth from 0.2 m (8 in) to 1.4 m (55 in). The average pH is 5.6 and ranges from 4.5 to 6.3 (Collins unpublished).

Bridges (1984) described the habitat of *Scutellaria montana* as ''. . . rocky, submesic to xeric, well-drained, slightly acidic slope, ravine and stream bottom forests in the Ridge and Valley and Cumberland Plateau provinces of Northwestern Georgia, and adjacent southeastern Tennessee (and probably Alabama).'' Bridges (1984) also listed distinguishing characteristics of the forests where *Scutellaria montana* is found as: (1) A history of some natural pine occurrence; (2) a canopy dominated by oaks and hickories; (3) a mostly deciduous shrub layer with some evergreen *Vaccinium*; (4) a moderately dense herb layer with mesic and xeric species; and (5) the site occurring on well-consolidated paleozoic to precambrian strata, often with some exposed rock.

Forest composition data has been collected on sites in the Marshall Forest and Marion County populations (Faulkner 1993; Collins, unpublished; Lipps 1966). Data from the sites where *Scutellaria montana* was first studied indicated that it occurred in late-successional forests. Studies of other sites suggest that it is more of a mid- to late-successional species (Bridges 1984; Collins, unpublished; Lipps 1966). At a Marion County, Tennessee, site, Faulkner (1993) observed *Scutellaria montana* persisting in an area where timbering activities had occurred and where the plants had been subjected to low-intensity ground fires. He concluded that, while individual plants established before the disturbance may survive, recruitment into disturbed sites is not likely. Fail and Sommers (1993) conducted a study on the Marshall Forest that suggests the associated species *Quercus prinus* (Chestnut oak) and *Oxydendrum arboreum* (Sourwood) may be producing toxic compounds that may be inhibiting growth and germination of *Scutellaria montana* near them.

Scutellaria montana does not appear to compete well with other herbaceous species, especially colonial plants that can propagate from extensive root structures, and is not found in thick herbaceous cover (Bridges 1984). While optimal light conditions are not yet known, plants grow in areas that receive a relatively greater amount of light at ground level, generally due to canopy disturbance (Sutter 1993). Nix (1993) states that ''canopy coverage is probably the most important environmental factor that influences growth and survival.'' However, disturbances to the canopy accompanied by disturbances to the soil can lead to increases in other herbaceous species that could be detrimental to *Scutellaria montana.*

When we listed *Scutellaria montana* in 1986, 10 populations were known; 7 in Georgia (4 in Floyd County, 2 in Walker County, and 1 in Gordon County) and 3 in Tennessee (2 in Hamilton County and 1 in Marion County). Now 32 populations are known. A population is being defined as an ''occurrence'' that is at least 0.5 miles from other occurrences, but we must take into account physical barriers (ridges, highways, etc.), contiguous habitat (occurrences could be 1 mile apart on the same ridge or slope), and richness or diversity of the occurrence. Based on criteria in the Large-flowered Skullcap Recovery Plan, a population is considered self-sustaining, or viable if it has a minimum of 100 individuals.

Georgia is now known to have 15 populations. In Floyd County, there are 7 known populations that range in size from a few plants to about 1,300 plants. Three of these populations are considered self-sustaining. Two of the three self-sustaining populations are protected on lands owned by The Nature Conservancy. Catoosa County, Georgia, is currently known to have 4 populations ranging in size from 10 to about 200 plants. One population (100–200 plants) is self-sustaining and is protected (Catoosa County Park). Walker County, Georgia, has 2 populations of 5 and 60 plants respectively, which do not meet the minimum criteria of 100 individuals for self-sustaining status. Additionally, there is an introduced population on the Chattahoochee National Forest in Walker County (not included in recovery criteria for downlisting). A single, nonviable population of 15 plants occurs in Dade County, Georgia, near the Lookout Mountain population in Tennessee. Another single nonviable population of an estimated 50 plants occurs in Chattooga County, Georgia. One population known from Gordon County, Georgia, was extirpated when the area was clearcut in 1986.

Tennessee is now known to have 17 populations. Hamilton County has 13 known populations, 7 of which are considered self-sustaining. These populations range in size from just a few plants to more than 2,000 plants. Several Hamilton County populations are made up of several subpopulations, some of which are large enough to constitute self-sustaining populations by themselves but do not meet the necessary criteria of being separated by at least 0.5 miles from each other. Marion County, Tennessee, now has 2 populations ranging in size from about 50 plants to more than 40,000 plants at the Tennessee River Gorge. The Tennessee River Gorge is a population made up of 8 subpopulations, 2 of which contain more than 20,000 plants. The smaller Marion County site is protected, and 6 of the 8 subpopulations in the Tennessee River Gorge are protected (less than 1 percent of the plants are not protected). Two populations of 2 and 50 plants respectively, are known from Sequatchie County, Tennessee. Neither is protected nor considered self-sustaining.

Previous Federal Action

Federal Government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed

the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on plants considered endangered, threatened, or extinct. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now Section 4(b)(3)) of the Act. By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *Scutellaria montana* was included in the Smithsonian report and the July 1, 1975, Notice of Review.

We published a revised Notice of Review for Native Plants on December 15, 1980 (45 FR 82480); *Scutellaria montana* was included as a category-1 species. Category 1 species were those for which we had information on file to support proposing them as endangered or threatened. On November 28, 1983, we published a supplement to the Notice of Review for native plants in the **Federal Register** (48 FR 53640). *Scutellaria montana* was changed to a category-2 species in this supplement. Category-2 species were those for which we had information indicating that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats were not currently known or on file to support the preparation of proposed listing rules. Subsequent to this notice, we received a draft status report on *Scutellaria montana* (Collins unpublished manuscript). This report and other available information indicated that the addition of *Scutellaria montana* to the Federal List of Threatened and Endangered species was appropriate.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This situation was the case for *Scutellaria montana* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, we found that the petitioned listing of *Scutellaria montana* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. On September 27, 1985, *Scutellaria montana* was again included as a Category 1 species in the revised Notice of Review (50 FR 39526) and on November 13, 1985, we published in the **Federal Register** (50 FR 46797) a proposal to list *Scutellaria montana* as an endangered species. That proposal constituted the next 1 year finding as required by the 1982 amendments to the Endangered Species Act. A final rule placing *Scutellaria montana* on the Federal List of Threatened and Endangered Plants as an endangered species was published in the **Federal Register** on June 20, 1986 (51 FR 22521).

Since listing, Federal actions have included a variety of recovery actions funded or carried out by the Tennessee Valley Authority (TVA), National Park Service (NPS), U.S. Forest Service, and the Service, including searches for additional populations, habitat studies, translocations, and land management.

We have conducted numerous consultations under section 7 of the Act involving *Scutellaria montana.* More than 50 consultations have taken place in Tennessee, principally concerning road and bridge construction or maintenance. Most potential conflicts have been resolved early in the informal portion of the consultation process resulting in concurrence by us with ''not likely to adversely affect'' determinations. One formal consultation was conducted that resulted in a ''no jeopardy'' biological opinion. There have been three informal section 7 consultations regarding this species in Georgia, one of which is ongoing.

A recovery plan was completed for *Scutellaria montana* in 1996 (U.S. Fish and Wildlife Service 1996). The recovery plan provides the following criteria for downlisting. ''If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range), the species will be considered for downlisting to threatened status.'' The recovery plan also provides a description of protected and managed self-sustaining populations as follows: ''A population will be considered adequately protected when it is legally protected and all needed active management is provided. A population will be considered ''self-sustaining'' if monitoring data support the conclusion that it is reproducing successfully and is stable or increasing in size. The minimum number of individuals necessary for a self-sustaining population should be considered at least 100 until otherwise determined by demographic studies.''

The criteria for downlisting have been met through both the number of known populations (32) and the number of self-sustaining, protected populations (11) distributed throughout the range of the species. Though no formal written agreements have been developed with the principle landowners where protected, self-sustaining populations occur (The Nature Conservancy, the States of Georgia and Tennessee, Tennessee Valley Authority and National Park Service), managers of these lands are committed to the conservation of these populations and are actively involved as part of the recovery team.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the list of threatened and endangered species. These factors and their application to *Scutellaria montana* (large-flowered skullcap) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

In 1986, when *Scutellaria montana* was listed as endangered, there were 7 populations known in Georgia and 3 in Tennessee. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only two sites, neither of which was completely protected. At the time of listing the most significant threats were logging, wildfires, livestock grazing, and residential development. In 1986, 80 percent of the site with the largest known population had been subdivided and was being offered for sale. A large portion of the second-largest population at that time was on land owned by The Nature Conservancy and was therefore afforded protection. The third largest population occurred on privately owned land and had no protection from potential land use changes. All remaining 1986 populations were extremely small, consisting of 4 to 60 plants, and were vulnerable to even the slightest modification of their remaining habitat. It was thought at the time of listing that one population had possibly been destroyed by timber operations conducted prior to the landowner becoming aware of the presence of *Scutellaria montana* on the property.

This species status has improved largely due to the fact that 20 (63 percent) of the 32 known populations are currently afforded protection through occurrence on lands owned by conservation organizations, county parks, or on Federal lands (11 of these protected populations are considered viable), and through the discovery of additional populations. However, threats to the species' habitat and future security still exist. Further, most of the plants (more than 85 percent) continue to occur in only two populations.

Habitat destruction caused by logging, residential development, clearing of wooded areas for pasture, grazing, and wildfire all continue to pose some degree of threat to the species. One population of *Scutellaria montana,* described in the final rule for this species, was lost due to clearcutting activities. Damage caused by off-road vehicles and hikers (trampling) has been noted at several sites, and the maintenance (widening) or rerouting of hiking trails is also a potential threat. Rapid urbanization in and around the Chattanooga area also poses a significant threat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In 1986, *Scutellaria montana* was not a significant component of the commercial trade in native plants. Significant commercial trade in *Scutellaria montana* is not currently known to occur or expected in the future, and no significant import or export is expected. Therefore, taking of *Scutellaria montana* for these purposes is not considered a threat.

C. Disease or Predation

While predation by animals, especially deer, has been observed at several sites, predation does not appear to be a factor affecting the continued existence of the species at this time. Some individual plants have been affected by disease, but this factor appears to affect only a few individuals and is not a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Though there is less protection afforded to threatened plants than to endangered plants under section 9 of the Act, the protection currently afforded and that would continue to be afforded this species under the Act is significant enough that inadequate regulatory protection cannot be considered a threat. Further, both Georgia (Ga. Code Ann. §§ 27–3–130 *et seq.*) and Tennessee (Tenn. Code Ann. §§ 70–8–301 *et seq.*) have rare plant protection laws that also protect this species.

Half (16) of the known *Scutellaria montana* populations occur on privately owned lands. Of these, 12 populations receive no protection. All of two populations and a portion of two others are owned by conservation groups that are active in management for the conservation of *Scutellaria montana.*

Of the populations that are not on privately owned land, one population occurs on county land (on a nature park), a portion of one other population occurs on city-owned land, and two entire populations and a portion of three others occur on state-owned land. Except for the portion of one population occurring on city-owned land, all of these populations are being actively managed (Shea and Hogan 1998). In addition, nine entire populations and portions of three others occur on Federal land (TVA, NPS, and Department of Defense-U.S. Army) where they receive the protection afforded by section 7 of the Act.

E. Other natural or manmade factors affecting its continued existence

Invasive species, such as Japanese honeysuckle (*Lonicera japonica*) and privet (*Ligustrum vulgare*), are currently a problem for some populations of *Scutellaria montana.* These non-native species are likely to continue to be a problem where disturbance allows these species to become established in proximity to *Scutellaria montana* on some smaller public areas and privately owned sites.

Several investigators have noted a low reproductive capacity for *Scutellaria montana.* The percentage of flowers that form fruit has been recorded at 30 and 44 percent in the Marshall Forest (Kemp and Knauss 1990), and, in another study, 91.5 percent of the plants did not form fruits (Kemp 1987). This reproductive rate is extremely low compared with other *Scutellaria* species that have 75 to 93 percent of the flowers producing mature nutlets (Collins 1976).

Scutellaria montana also produces fewer seeds per fruit compared with other members of the genus. Kemp and Knauss (1990) found that the fruit averaged 2.2–2.3 seeds rather than the 4 seeds that are possible. Similarly, Cruzan (*in* Shea and Hogan 1998) found pollen present on 60 percent of the styles, but only 15 percent of these flowers set fruit with an average of 2 seeds per fruit.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Scutellaria montana* in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify *Scutellaria montana* from an endangered species to a threatened species. The Recovery Plan for *Scutellaria montana* states that the species is qualified for downlisting to threatened ''. . . If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range) . . .'' The criteria for downlisting have been met through both the number of known populations (32) and the number of viable (self-sustaining), protected populations (11) distributed throughout the range of the species.

Available Conservation Measures

Half (16) of the known *Scutellaria montana* populations are privately owned (all of two populations and a portion of two other are owned by conservation groups), one is County-owned, a portion of one is City-owned, and two entire populations and a portion of three others are State-owned. However, nine entire populations and portions of three others are on Federal land (TVA, NPS, and Department of Defense-U.S. Army).

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for designation with this proposed rule.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. However,

unlike endangered plants, not all prohibitions of section 9(a)(2) of the Act apply (50 CFR 17.71). Those prohibitions that do apply, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession any threatened plant species from areas under Federal jurisdiction.

Under the Act, reclassifying *Scutellaria montana* from endangered to threatened status will continue to protect *Scutellaria montana* on areas under Federal jurisdiction. Collection, removal and possession of plants found on Federal land is prohibited. Activities including removal, cutting, digging up, damaging, or destroying threatened plants on non-Federal lands would constitute a violation of State natural resource laws or regulations. Such actions if conducted in the course of violating State criminal trespass laws may also be subject to prosecution.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special activities consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisors of either the Service's Asheville Field Office (see the ''Addresses'' section); the North Georgia Field Office, 380 Meigs St., Athens, Georgia 30601 (706/613–9493); or the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (615/528–6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–7088; Fax 404/679–7081).

This proposed rule proposes to change the status of *Scutellaria montana* at 50 CFR 17.12 from endangered to threatened. If made final, this rule would formally recognize that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Reclassification would not significantly alter the protection for this species under the Act. Anyone taking, attempting to take, or otherwise possessing *Scutellaria montana* in violation of section 9 is still subject to a penalty under section 11 of the Act. There is no difference in penalties for the illegal take of endangered species versus threatened species. Section 7 of the Act would still continue to protect this species from Federal actions that would jeopardize its continued existence.

Finalization of this rule will not be an irreversible commitment on the part of the Service. Reclassifying *Scutellaria montana* to endangered would be possible should changes occur in management, habitat, or other factors that alter the species' status or increase threats to its survival.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Scutellaria montana;*

(2) The location of any additional populations of *Scutellaria montana*;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Scutellaria montana.*

In promulgating a final regulation on *Scutellaria montana,* we will take into consideration the comments and any additional information we receive, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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 control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.72.

National Environmental Policy Act

We have determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Mr. J. Allen Ratzlaff (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

We propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. We propose to amend § 17.12(h) by revising the entry for *Scutellaria montana* under ''FLOWERING PLANTS'' in the ''Status'' column to read ''T'' instead of ''E''.

* * * * *

Dated: June 2, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–17561 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000524154–0154–01; I.D. 051100C]

RIN 0648–AO12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Commercial Fishing Gear; Control Date

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

ACTION: Advance notice of proposed rulemaking; notice of control date for gear eligibility.

SUMMARY: This document announces that the Gulf of Mexico Fishery Management Council (Council) is considering whether there is a need to limit participation by gear type in the commercial reef fish fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico and, if there is a need, what management measures should be imposed to accomplish this. If the Council and NMFS determine that management measures are needed, a rulemaking to do so may be initiated. Possible measures include modifications to the existing limited entry program to control fishery participation, or effort, based on gear type, such as a requirement for a gear endorsement on the commercial reef fish vessel permit for the appropriate gear. Gear types which may be included are longlines, buoy gear, handlines, rod-and-reel, bandit gear, spearfishing gear, and powerheads used with spears. This notice is intended to inform fishermen that anyone not using a particular gear by July 12, 2000 may not be eligible to use that gear if a gear-type effort control program is established. This announcement of a control date for gear eligibility is intended to discourage the use of different gear based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be received at the appropriate address or fax number no later than 5 p.m., Eastern Daylight Time, on August 11, 2000.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; fax: 813–225–7015; email: gulfcouncil@gulfcouncil.org. When providing comments, include your name, city, state, and your relevant background and interest, e.g., commercial fisherman, recreational fisherman, conservationist. Comments submitted by e-mail should also include a valid e-mail address. If you are commenting on behalf of an organization, please include your organization's name and number of members.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Crabtree, 727–570–5305; fax: 727–570–5583; e-mail: Roy.Crabtree@noaa.gov or Steven Atran, 813–228–2815; fax: 813–225–7015; e-mail: Steven.Atran@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for reef fish in the EEZ of the Gulf of Mexico are managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Entry to the commercial reef fish fishery in the Gulf of Mexico is already limited by a permit system. The fishery is conducted with a variety of gears. The Council is concerned that some of these gears, particularly bottom longline gear, may be so efficient that users of those gears are harvesting a disproportionate share of the commercial grouper quota or are harvesting at a rate that is inconsistent with providing a year-round fishery. Additionally, NMFS' Office of Sustainable Fisheries, Highly Migratory Species Division (HMS Division), and Congress are considering proposals that would restrict the use of pelagic longline gear in the Gulf of Mexico and in the Atlantic. The HMS Division has published a proposed rule that would restrict the use of pelagic

longline gear in Atlantic Ocean and Gulf of Mexico waters (64 FR 69982, December 15, 1999). The Council is concerned that these proposals, if implemented, could result in a shift in effort from the pelagic longline fishery to the reef fish bottom longline fishery or other reef fish fisheries. Such effort shift could have an adverse impact on the allocation of the available reef fish resources among historical participants. The Council is also concerned about the incidental mortality of non-targeted species, impacts on essential fish habitat, and ghost fishing of unattended or abandoned gear. For these reasons, the Council is considering the need to evaluate the use of gears in the commercial reef fish fishery, and possibly to recommend limits on the use of some gears to ensure a fair and equitable allocation of the available resources, prevent overfishing and habitat destruction, and minimize bycatch mortality.

Commercial harvest of reef fish from the EEZ of the Gulf of Mexico using several gears or harvest methods is currently prohibited. Under 50 CFR 622.31, explosives and poison may not be used to fish for reef fish, and the possession of explosives onboard a vessel that is fishing in the EEZ for reef fish or that has a Federal vessel fishing permit for reef fish is prohibited. Under 50 CFR 622.39(a)(2), vessels that have trawl gear or entangling net gear onboard are restricted to the recreational bag and possession limits of reef fish (which cannot be sold). FMP Amendment 5 imposed a moratorium in 1994 on the number of vessels authorized to fish for reef fish using fish traps. FMP Amendment 14 established a limited entry system for the fish trap fishery and prohibits the use of fish traps to fish for reef fish in the EEZ after February 7, 2007.

NMFS published a final rule in the **Federal Register** (64 FR 67511, December 2, 1999) that lists authorized fisheries and fishing gear (LOF) for each fishery under the authority of a regional fishery management council or under the authority of the Secretary of Commerce (Secretary) with respect to Atlantic highly migratory species (HMS). Any person intending to fish with a gear or in a fishery in the EEZ not included in the LOF must give a 90-day advance notice to the appropriate regional fishery management council or to the Secretary with respect to HMS. For the Gulf of Mexico commercial reef fish fishery, the LOF listed the authorized gears as traps, pots, longline, buoy gear, handline, rod-and-reel, bandit gear, spear, powerhead, castnet, and trawl.

Implementation of an effort limitation program for gear used in the Gulf of Mexico reef fish fishery in the EEZ would require the Council's preparation of an FMP amendment and its submission to NMFS for Secretarial review, approval, and implementation. Under Secretarial review, NMFS would make the FMP amendment and its proposed rule available for public comment.

As the Council considers management options, some fishermen who do not currently participate in the commercial reef fish fishery with a particular gear, and have never done so, may decide to use that gear in the fishery for the sole purpose of establishing a record of landings. To avoid this first-time use of gear in order to establish a record of landings, the Council has established July 12, 2000 as a control date for gear eligibility. After that date, anyone not already using a particular gear, may not be eligible to continue using it if a management regime is developed and implemented limiting the number of fishery participants authorized to use that gear.

This notice of control date for gear eligibility applies to all gears listed in the LOF for the commercial reef fish fishery of the Gulf of Mexico, except for pots and traps, castnets, and trawls. Reef fish traps and pots are already under a limited entry system; therefore, application of this control date to reef fish traps and pots is unnecessary and inappropriate. Castnets are included in the LOF to allow fishermen to catch bait while on a reef fish trip but are not used to harvest reef fish directly. It is, therefore, unnecessary to include castnets in this notice of control date for gear eligibility. Bag and possession limits for Gulf reef fish apply to a person aboard a vessel with trawl gear onboard. Because the bag limits cannot be sold, such trawl gear is already excluded from the commercial reef fish fishery. However, groundfish vessels with bottom trawls may include reef fish bycatch in their unsorted catch. Because groundfish trawl vessels land their catch unsorted, it is impracticable to separate and release the reef fish bycatch. Consequently, groundfish vessels are exempted from the requirements for reef fish vessel permits, minimum size limits, bag limits, and quota closures. Groundfish trawls comprise a small fishery in the northern Gulf of Mexico, and are included in the LOF to accommodate the reef fish bycatch.

Announcement of a control date for gear eligibility does not commit the Council or NMFS to any particular management regime or criteria for authorization to use a gear in the commercial reef fish fishery. Fishermen are not guaranteed future participation with that gear in the fishery regardless of their entry date or intensity of participation in the fisheries before or after the control date for gear eligibility under consideration. The Council subsequently may choose a different control date for gear eligibility date or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen active in the fishery with the gear before and after the control date for gear eligibility. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council also may choose to take no further action to control use of gear in the fishery, in which case the control date for gear eligibility may be rescinded.

This advanced notice or proposed rulemaking has been determined to be not significant for purposes of E. O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17629 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 070300B]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on July 26 and 27, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, July 26, 2000, beginning at 9:30 a.m. and Thursday, July 27, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel—Portland, 1230 Congress Street, Portland, ME 04102; telephone (207) 774–5611. Requests for

special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, July 26, 2000

After introductions, the meeting will begin with a Stock Assessment Public Review Workshop. Staff from NMFS's Northeast Fisheries Science Center will present an advisory report on the status of monkfish, with brief updates on the scup, summer flounder and ocean quahog resources. A report from the Groundfish Committee will follow. It will include a lengthy discussion of possible management approaches to Amendment 13 to the Northeast Multispecies Fishery Management Plan for purposes of further consideration and development. Updates on management issues concerning spiny dogfish, sea scallops and the Council's Research Steering Committee will occur later in the day.

Thursday, July 27, 2000

The second day of the meeting will begin with reports on recent activities from the Council Chairman, the Executive Director, the NMFS Regional Administrator, the Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement, and the Atlantic States Marine Fisheries Commission. The Council's Magnuson-Stevens Act Committee will review comments developed on the reauthorization bills currently before Congress. During the Herring Committee Report to follow, Council staff will present the annual Stock Assessment and Fishery Evaluation (SAFE) Report for herring. The Council also will discuss the Scientific and Statistical Committee's review of SAFE Report elements and approve the annual herring specification recommendations to be forwarded to NMFS for the 2001 fishing year. The Council meeting will adjourn after addressing any other outstanding business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. If she concurs with the adjustment proposed by the Council, the Regional Administrator has the discretion to recommend publication of the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least five days prior to the meeting date.

Dated: July 6, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17630 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 134
Wednesday, July 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to extend an approved information collection with change. The following two forms are authorized under Office of Management and Budget number 0596–0081: R1–FS–2850–1-Application/Permit and FS–2800–9-Contract for the Sale of Mineral Materials. The agency is requesting an authorization extension for FS–2800–9 only.

The information collected using the form, FS–2800–9, enables the Forest Service to ensure that individuals, organizations, companies, or corporations conducting mining operations on National Forest System lands, conduct the operations in a manner consistent with all applicable land management laws and regulations in an environmentally responsible manner and are financially accountable.

DATES: Comments must be received in writing on or before September 11, 2000.

ADDRESSES: Send written comments to Director, Minerals and Geology Management Staff, (Mail Stop 1126), Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1243 or by e-mail to mgreeley@fs.fed.us.

The public may inspect comments in the Office of the Director, Minerals and Geology Management Staff, Forest Service, USDA, 201 14th Street, SW, Washington, D.C. To facilitate entrance into the building, visitors are encouraged to call (202) 205–1042.

FOR FURTHER INFORMATION, CONTACT: Mike Greeley, Minerals and Geology Management, at (202) 205–1237.

SUPPLEMENTARY INFORMATION:

Background

The Mineral Materials Act of 1947, as amended, and the Multiple Use Mining Act of 1955, as amended, authorize the Secretary of Agriculture to dispose of petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the Forest Service. Individuals, organizations, companies, or corporations may apply for a permit to mine these mineral materials using the form, FS–2800–9-Contract for the Sale of Mineral Materials.

In past years, the Forest Service requested authorization for two forms for prospecting or mining mineral materials using Office of Management and Budget number 0596–0081: R1–FS–2850–1-Application/Permit and FS–2800–9-Contract for the Sale of Mineral Materials. R–1–FS–2850–1-Application/Permit is a Forest Service regional form; the agency is not requesting an authorization extension for this form. FS–2800–9-Contract for the Sale of Mineral Materials is a Forest Service national form; the agency is requesting an authorization extension for this form.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2800–9, Contract for the Sale of Mineral Materials.

OMB Number: 0596–0081.

Expiration Date of Approval: August 2000.

Type of Request: Extension of an information collection approved by the Office of Management and Budget.

Abstract: The collected information enables the Forest Service to document planned operations, to prescribe the terms and conditions the agency deems necessary to protect surface resources, and to effect a binding contract agreement.

Forest Service employees also will evaluate the collected information to ensure that entities, applying to mine petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the Forest Service, are financially accountable and conduct their activities in accordance with the mineral regulations at part 228, subpart C, of title 36 of the Code of Federal Regulations.

Individuals, organizations, companies, or corporations, interested in mining mineral materials on National Forest System lands, may contact their local Forest Service office to inquire about opportunities and to learn about areas on which such activities are permitted. Interested parties also may request the form, FS–2800–9, at this time.

Individuals, organizations, companies, or corporations are asked to provide information that includes the purchaser's name and address, the location and dimensions of the area to be mined, the kind of material that will be mined, the quantity of material that will be mined, the sales price of the mined material, the payment schedule, the amount of the bond, and the period of the contract.

Data collected in this information collection are not available from other sources.

Estimate of Burden: 2.5 hours.

Type of Respondents: Mineral materials operators.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 6, 2000.

James R. Furnish,

Deputy Chief for National Forest System.

[FR Doc. 00–17580 Filed 7–11–00; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Davis Land Exchange; White River National Forest; Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of land exchange.

SUMMARY: On June 15, 2000, Anne Keys, Deputy Under Secretary for Natural Resources and Environment, signed a Decision Notice and Finding of No Significant Impact for the Davis Land Exchange. The decision authorizes the exchange of 7.32 acres within the White River National Forest, Colorado, for approximately 61 acres in Pitkin County, Colorado. The exchange will be completed under authority of and in accordance with the General Exchange Act of March 20, 1922; the Federal Land Policy and Management Act of October 21, 1976, as amended; and the Federal Land Exchange Facilitation Act of August 20, 1988.

EFFECTIVE DATE: June 15, 2000.

ADDRESSES: Copies of the decision and environmental assessment may be obtained from Mr. Allan Grimshaw, Aspen Ranger District, 806 West Hallam Street, Aspen, CO 81611.

FOR FURTHER INFORMATION CONTACT: Allan Grimshaw, Aspen Ranger District, at (970) 925–3445 or email agrimshaw@fs.fed.us.

Dated: June 26, 2000.

Sally D. Collins,

Associate Deputy Chief.

Decision Notice and Finding of No Significant Impact for the Davis Land Exchange, Pitkin County, Colorado, USDA Forest Service, White River National Forest, Aspen and Sopris Ranger Districts, May 2000

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To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW Washington DC 20250–9410 or call (202) 720–5964 (voice or TDD). USDA is an equal opportunity provider and employer.

Introduction

The Davis Land Exchange was initiated in an effort to resolve a title claim by Mr. D. Stone Davis against the United States, Pitkin County, Colorado, and others. Properties claimed by both the United States and Mr. Davis were conveyed to the United States by Pitkin County in1994 as part of the implementation of the Colorado Land Exchange Act of May 19, 1994 (Pub. L. 103–255). The United States has entered into a settlement agreement with Davis and Pitkin County whereby the United States would consider exchange of certain National Forest System lands for Davis' interest in disputed lands and others.

This Decision Notice (DN) documents my decision regarding the proposed Davis Land Exchange. An environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act for this proposal and discloses the environmental effects. This EA is available for review at the Forest Service Offices in Aspen and Glenwood Springs, Colorado. A biological assessment (BA)/biological evaluation (BE) was prepared in compliance with process requirements under the Endangered Species act and related Forest Service Policy. Floodplain and wetlands evaluations were prepared. A heritage resources inventory and report were completed. I referred to and have relied heavily upon these documents in my decision documented here.

Purpose and Need

The Colorado Land Exchange Act of May 19, 1994 (Pub. L. 103–255) directed the Forest Service to exchange approximately one hundred thirty two acres of land at the former Mt. Sopris Tree Nursery (MSTN), in Eagle County, Colorado, for approximately one thousand three hundred acres of patented mining claims whose ownership was claimed by Pitkin and Eagle Counties. Pitkin County issued a quit claim deed to the United States for 148 patented claims on August 16, 1994 and an additional quit claim deed for 4 patented parcels on September 30, 1994. Eagle County issued a quit claim deed to United States for 4 patented claims on July 26, 1994.

The Act also provided that any party who claimed any right, title, or interest in or to any lands conveyed to the Forest Service under the Act, would have to bring an action against the United States pursuant to the Real Property Quiet Title Act of October 25, 1972 (section 2409a of title 28, U.S.C.), prior to September 15, 2000. Civil action No. 96–WM–1607 was filed in United States District Court for the District of Colorado, naming the United States of America, Pitkin County, and a number of other parties as defendants. The purpose of the action was to have the court quiet title to the Picayune Lode (U.S. Mineral Survey No. 5743) and the Daisy Lode (U.S. Mineral Survey No. 4050).

Subsequently, Mr. Davis, the United States and Pitkin County negotiated a settlement agreement to resolve Mr. Davis' title claim. The settlement agreement was accepted by the U.S. District Court on September 10, 1999. The settlement agreement specifies that Mr. Davis, the United States, and Pitkin County will exchange various interests in land.

The Decision

I am well convinced that there is a valid purpose and need for this exchange. It is my decision to proceed with the land exchange as proposed in Alternative 1 of the EA. The exchange will be completed under authority of and in accordance with the General Exchange Act of March 20, 1922 (Pub. L. 67–173), the Federal Land Policy and Management Act of October 21, 1976 (FLPMA, Pub. L. 100–409). Additional authority for settlement is provided through the United States Attorney Manual, Chapter 4–1.300.

The Forest Service will convey approximately 7.32 acres of Federal land with an agency approved value of $725.000 to D. Stone Davis. Non-Federal parcels totalling approximately 65 acres with an agency approved value of $897,781 will become National Forest. This exchange will require a cash equalization payment by the United States to Mr. Davis in the amount of $172,781, in order to meet the equal value requirements of the Federal Land Policy and Management Act. The decision also includes the specified mitigation outlined in the environmental assessment. With regards to item d. of Alternative 1, the MIDCON Realty property to be conveyed to the United States is described as follows:

Township 10 South, Range 89 West, 6th PM,
County of Pitkin, State of Colorado
Sec. 10 N½ E½ SE¼ NE¼ SE¼;
Sec. 11 SW¼ NW¼ SW¼;
Sec. 14 N½ NW¼ NW¼, NW¼ NE @ NW¼.

The area described contains 42.5 acres, more or less.

Reasons for My Decision

After reviewing the EA and the public comment received through the process, I am convinced that this land exchange serves the public interest. Implementation of Alternative 1 not only resolves the title claim fairly and expeditiously, it provides for the acquisition of non-Federal land valuable for National Forest purposes.

Acquisition of the non-Federal parcels assist in achieving the objectives of the White River National Forest Land and Resource Management Plan (EA page 2). The non-Federal parcels which become National Forest will be protected from the sale, resale, and further development which could occur absent this exchange. Development would likely take place on most of the non-Federal lands in this exchange. This development would have a negative affect on the surrounding National Forest and would threaten the values for which those lands are being managed in the broader public interest. This is particularly true for the Case Lode and the MIDCON parcels. This exchange offers the opportunity to secure these lands from such intrusion.

The Forest Service's jurisdiction over the proposed land exchange is limited to the transfer of land ownership. While the National Environmental Policy Act (NEPA) requires the Forest Service to evaluate and disclose the impacts that can be expected as a result of the exchange. The use and management of the land that becomes private as a result of this exchange will be subject to the zoning authority which is Pitkin County. Pitkin County is a party to the Settlement Agreement. The agreement, as well as the past actions, demonstrate a strong desire to insure controlled development within the County. They support this exchange. This indicates to me that they are reasonably comfortable with their jurisdictional authority to regulate and mitigate development which results from the land exchange.

The Federal parcel is located in an area of considerable private land with ongoing development. The conveyance of this parcel will affect its use and enjoyment by owners of the adjacent property. However, it is my responsibility to insure that decisions involving National Forest reflect the greater public interest. It is acknowledged that wildlife habitat quality, which is already low, would decline further when the parcel is inevitably developed. In addition, the limited recreation resources associated with the parcel would be loss. I believe that both of these impacts are more than offset by the values associated with the non-Federal parcels to be acquired.

The administrative obligations of the Forest Service would be reduced through reduction of 6000 feet of boundary line to be located, posted and maintained and 12 corners to locate and maintain. Boundary location cost in this area is estimated of $11,000/mile. Maintenance costs are estimated at $2,500/mile every five years. There would be no change in road maintenance costs. There will be no net change in road miles the Forest Service would maintain.

Public Interest Determination

Per the requirements of 36 CFR 254.3(2), I have reviewed this decision against the criteria for determining public interest.

The resource values and the public objectives served by the non-Federal lands and interests to be acquired exceed the resource values and public objectives served by the by the Federal land to be conveyed. Also considered here was the time and expense of prolonged litigation in resolving the title claim.

The intended use of the Federal land will not substantially conflict with established management objectives on adjacent Federal land.

The consideration of all physical and biological resources and the public interests associated with both Federal and non-Federal properties, demonstrates a net gain in the public interest with the selection of Alternative 1.

Alternatives

The proposed action was analyzed in detail in the Environmental Assessment, along with the No Action alternative. Other alternatives were considered but dismissed from further analysis. The alternatives analyzed in detail in the Environmental Assessment are summarized below.

Alternative 1, Exchange Lands with D. Stone Davis, Proposed Action

Complete a land exchange under the current laws and regulations and Department of Justice Settlement Authority.

- The Forest Service would convey approximately 7.32 acres of Federal land into private ownership.
- D. Stone Davis would convey approximately 65 acres of non-Federal land to the United States.

Alternative 2, No Action

No lands would be exchanged between the Forest Service and D. Stone Davis.

- Land owned entirely by Davis would be available for resale or development. Litigation would continue over those properties with disputed title.
- The Federal land would remain under the current management prescription of the White River National Forest Land and Resource Management Plan. It would remain available for potential disposal in future exchanges.

Deed Restrictions

I wish to further expound on the impositions of deed restrictions, and alternative that was initially considered but dismissed. It has been suggested that the use of deed restrictions on the Federal parcel may be appropriate.

Forest Service direction for use of deed restrictions is found at several locations, including:

(a) Forest Service Manual 5474 deed restrictions and conditions.

In conveyances of National Forest System lands, in addition to reservations, it may be necessary to apply specific limiting conditions to manage effectively or to protect National Forest System lands and resources.

(b) Federal Register Notice of March 8, 1994, Part II, Department of Agriculture, Forest Service. 36 CFR 254 Land Exchanges; final rule.

A review of specific comments for 36 CFR 254.32 (h) *Reservations or restrictions in the public interest* provide an indication of the intent of this regulation. It contains references to ''protecting critical interests'' and restrictions to protect ''any federal interests''. The regulation itself states that ''(t)he use or development of lands conveyed out of federal ownership are subject to * * * all laws, regulations and zoning authorities of State and local governing bodies''.

(c) Forest Service Policy Statements.

October 14, 1999 memo from Deputy Chief James Furnish to Regional Foresters: ''Do not propose or agree to restrictive covenants on the Federal lands unless they are required to comply with legal, regulatory requirements, executive orders, (*i.e.,* wetlands or floodplains, cultural) or to meet land and resource management objectives. Do not agree to reservations by either party as a means of equalizing values. The potential de-valuing effect of covenants on the Federal lands need

to be considered when developing proposals.''

Forest Service direction indicates that deed restrictions are to be imposed in only those occasions when necessary to protect critical Federal interests. Neither scoping nor evaluation of the Federal land by specialists identified any critical resources or National Forest lands in need of protection through deed restrictions. In addition, the use of deed restrictions is not consistent with the Forest Service goal of improving the effectiveness and efficiency of its management. The Forest has identified these properties for disposal because of their intermingled status with private land, which makes management complicated and costly. Administration of deed restrictions can be extremely complicated, time consuming and expensive, resulting in a potential decrease in management efficiency, instead of the intended increase.

Finally, deed restrictions are not imposed to protect property interests on adjacent private property. The Forest Service has long taken the position that zoning and regulation of uses on private land are within the responsibility of state and local governments. Local authorities are in the best position to determine appropriate uses of private land. The Forest Service has neither the legal authority nor responsibility to substitute deed restrictions for local zoning controls. Local governments have traditionally agreed and insisted that such decisions be left to them.

Based on the fact that conveyance of the property with deed restrictions is inconsistent with policy, direction and regulation, and is beyond the scope of Forest Service responsibility, this alternative was dismissed from further consideration. It is ''unlikely to be implemented'' and thus, merited no further consideration.

Scoping and Public Involvement

A scoping effort to solicit issues and concerns related to the proposed action was accomplished through:

- The publication of the exchange proposal in the Aspen Times (July 31, August 7, 14 and 21, 1999)
- A mailing addressing the proposed action to potentially interested or affected organizations and individuals across the White River National Forest (July 30, 1999)
- A mailing to local officials, Pitkin County Commissioners, State of Colorado agencies, and the Colorado Congressional Delegation (March 23, 1999)

Four comment letters were received as a result of the scoping effort. All comments made or submitted were considered in this analysis and are available for review in the project file.

A notice of the availability of the completed EA was mailed to four parties on April 6, 2000. Both a notice of the availability of the EA and a copy of the EA were mailed or hand delivered to 18 parties between April 5th and April 7th. Those 18 parties were those who had commented, those who had previously requested copies, and those who we believed were very interested in the proposal. Legal notices of the availability of the EA were published April 3, 2000 in the Federal Register and April 8, 2000 in the Aspen Times.

Four written comments on the Environmental Assessment were received within the 30 day comment period. These comments have been documented and responses are provided in Appendix G of the EA.

Changes in the Environmental Assessment in Responses to Public Comment and Since February 2000

The Scoping section (EA page 4) was amended to include public review of the Environmental Assessment. Appendix G was also added. Appendix G is identification of the public comments on the Environmental Assessment and the Forest Service Response to those comments.

The EA, under mitigation measures for Alternative 1, called for reserving a right-of-way across the Federal parcel for a driveway to access land to the north. It was determined that this reservation is not needed because land to the north adjoins Castle Creek Road. This mitigation has been deleted from the EA.

Three names have been added to Exhibit 3 of Appendix B (parties who were mailed the 7/30/99 scoping letter). These names were overlooked when the EA was prepared.

Appendix E (BA & BE) has been supplemented with documentation of ''No Effect'' on Canada Lynx.

Finding of No Significant Impact

Based on my review of the Environmental Assessment, including appendices and supporting documents, it is my conclusion that Alternative 1 is not a major Federal action that would significantly effect the quality of the human environment as defined at 40 CFR 1508.27. Therefore, an environmental impact statement will not be prepared. This finding is based on the following factors:

- *Consideration for context of the project.* The context is local to Pitkin County, Colorado with implications for the immediate area only.
- *Consideration of both beneficial and adverse impacts.* Impacts from the selected action are not unique to this project. I conclude that the beneficial and adverse effects of the selected action are not significant to the context of the proposed and cumulative effects.
- *Consideration of the effects on public health and safety.* This exchange will not affect public health or safety. There are no hazardous materials or substances present on either the federal or non-Federal lands to be exchanged.
- *Consideration of unique characteristics of the geographic area.* There are no ''unique characteristics of the geographic area'' as defined at 40 CFR 1508.27(3).
- *Consideration of the degree to which the effects are likely to be highly controversial.* This land exchange is consistent with many other lands exchanges. There are no scientific disputes over the likely effects of this project. Therefore, I conclude that the environmental effects of the decision will not be highly controversial.
- *Consideration of the degree to which effects are uncertain or unknown.* This exchange is not likely to result in effects on the human environment which are highly uncertain or involve unique risk. It is similar to many past actions which have occurred on the White River National Forest. The probable effects and risks are well understood.
- *Consideration of the degree to which this action will set a precedent for future actions with significant effects.* Neither the land exchange nor this decision are precedent setting. Similar land exchanges have occurred in the past, nationally and locally. They are completed by Forest Service and by other public land management agencies with the objective of consolidating public land ownership. I conclude that this action does not establish precedence for further actions as each project must be evaluated on its individual merits.
- *Consideration of the action in relation to other actions with individually insignificant but cumulatively significant impacts.* This land exchange would not likely have cumulatively significant impacts on the environment.
- *Consideration of the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural or historic resources.* Cultural resource surveys have been conducted on all Federal lands to be exchanged. The selected

action will not affect any site, structure or object. No sites that are eligible for listing in the National Register of Historic Places or that may be scientifically, culturally or historically significant will be affected. Based on this information, I conclude that the selected action will not cause loss or destruction of significant scientific, cultural or historic resources. (EA, page 4)

• *Consideration for the degree to which the action may affect threatened or endangered species, or its critical habitat.* No threatened, endangered species is known to exist in the areas considered under this land exchange. There is no habitat within the project area that is viewed as critical habitat for threatened or endangered species, as documented in the biological assessment. There is the potential for sensitive species to benefit from the protection of acres of potential habitat. (EA, Page 4)

• *Consideration of whether the action violates or threatens to violate federal, state, or local laws or requirements imposed for the protection of the environment.* This land exchange does not violate nor threaten to violate any federal, state or local laws, regulations or requirements for protection of the environment.

Findings Required by Other Laws and Regulations

Executive Orders 11988 and 11990

The Forest Service has evaluated the proposed exchange in accordance with EO 11988 Floodplains and EO 11990 Wetlands and is in compliance. There are no floodplains or wetlands involved.

Endangered Species Act

The Biological Assessment/Biological Evaluation concluded the land exchange would have ''No Effect'' on any threatened, endangered or sensitive species.

National Historic Preservation Act

Heritage resource inventories have been completed on the federal parcels and the Colorado State Historic Preservation Officer has concurred with a finding of No Effect.

White River National Forest Land and Resource Management Plan

The land exchange is in compliance with the White River National Forest Land and Resource Management Plan as described on pages 2–3 of the EA.

CERCLA, Comprehensive Environmental Response, Compensation, and Liability Act

Field examinations of the Federal and non-Federal parcels considered for exchange have been completed. No evidence was found that hazardous or potentially hazardous substances or petroleum products have been used, stored, released or disposed on any parcel.

Implementation Date

Implementation of this decision may occur immediately.

Administrative Review or Appeal Opportunities

Since the decision notice was approved by the Secretary of Agriculture pursuant to the provisions of 36 CFR 215.2, this decision is not subject to the overall requirements of 36 CFR 215 and thus, cannot be appealed. The requirements of 36 CFR 215 apply only to forest service line officers.

Additional Information and Contact Person

For additional information concerning this decision, contact: Allan Grimshaw, Aspen Ranger District, White River National Forest, 806 West Hallam St., Aspen, Colorado 81611, 970/925–3445.

Dated: June 15, 2000.

Anne Keys,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 00–17581 Filed 7–11–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–853]

Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley at (202) 482–0631 or Charles Riggle at (202) 482–0650, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Final Determination

We determine that circular seamless stainless steel hollow products from Japan are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on April 21, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 25305 (May, 1, 2000) (*Preliminary Determination*). On May 31, 2000, case briefs were filed by Plymouth Tube Company (Plymouth Tube) and the petitioners.[1] Sumitomo Metal Industries, Ltd. (SMI) and the petitioners submitted rebuttal briefs on June 5, 2000. A hearing was held on June 26, 2000.

On May 31, 2000, SMI, Kawasaki Steel Corporation (Kawasaki) and Mitsui Tubular Products Inc., requested that the Department issue to the Customs Service a clarification which would allow certain shipments of proprietary grade oil country tubular goods (OCTG), which have been excluded from the scope of the investigation, to enter without suspension of liquidation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 5, 2000, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision*

[1] The petitioners include Altx, Inc., American Extruded Products, PMAC Ltd, DMV Stainless USA, Inc., Salem Tube Inc., Sandvik Steel Co., International Extruded Products LLC, Pennsylvania Extruded Company (Pexco) and the United Steel Workers of America, AFL–CIO/CLC.

Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The scope of the investigation has been amended since the preliminary determination. For a description of the scope of this investigation, see the ''Scope of Investigation'' section, as well as item 2 in the ''Discussion of the Issues'' section, of the Decision Memorandum, which is on file in B–099 and available on the Web at *http://ia.ita.doc.gov.*

Period of Investigation

The period of investigation (POI) is October 1, 1998, through September 30, 1999.

Facts Available

In the preliminary determination, the Department based the dumping margins for the mandatory respondents, SMI and Sanyo Special Tube (Sanyo), on facts otherwise available pursuant to section 776(a)(2)(A) of the Act. For the final determination, the use of facts otherwise available continues to be necessary because the record does not contain company-specific information. Sanyo failed to respond to the Department's questionnaire, nor did it provide any indication that it was unable to do so. SMI responded to the Department's questionnaire, but failed to respond to all of the supplemental questionnaires and subsequently withdrew all of its questionnaire responses from the record. *See Memorandum from Constance Handley to the File, re: Return of Sumitomo Metal Industries Questionnaire Responses*, dated May 12, 2000. Therefore, the Department found that both Sanyo and SMI failed to cooperate by not acting to the best of their ability. As a result, pursuant to section 776(b) of the Act, the Department used an adverse inference in selecting from the facts available. Specifically, the Department assigned to the mandatory respondents the highest margin alleged in the petition. We continue to find this margin corroborated, pursuant to section 776(c) of the Act, for the reasons discussed in the *Preliminary Determination.* No interested parties have objected to the use of adverse facts available for the mandatory respondents in this investigation, nor to the Department's choice of facts available. In addition, the Department has left the ''All Others Rate'' unchanged from the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of circular seamless stainless steel hollow products from Japan, that are entered, or withdrawn from warehouse, for consumption on or after May 1, 2000, the date of publication of our preliminary determination. The Customs Service shall require a cash deposit or bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Sanyo Special Tube	156.81
Sumitomo Metal Industries	156.81
All Others	62.14

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. Ultra-high purity 316L Redraw Hollows

2. Scope Exclusion

[FR Doc. 00–17645 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Orders and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

SUMMARY: In accordance with 19 CFR 351.216(b), Toyo Ink America (''TIA'') requested a changed circumstances review of the antidumping order on Certain Corrosion-Resistant Carbon Steel Flat Products from Japan with respect to ''doctor blades.'' Domestic producers of the like product have expressed no interest in continuation of the order with respect to doctor blades. In response to TIA's request, the Department of Commerce (''the Department'') is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182, (202) 482–3818, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR. part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2000, TIA requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, TIA requested that the Department revoke the order with respect to imports of doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to .03% of phosphorous; less than or equal to .006 percent of sulfur; other elements representing .24%; and the remainder of iron. TIA is an importer of the products in question.

Scope of Review

This review covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate; (4) carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (5) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; Ispat Inland Steel; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a unit of USX Corporation, of no further interest in continuing the order with respect to certain corrosion-resistant carbon steel flat products described as doctor blades which are specificed as carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900—990 HV; the carbon steel coil or strip consists of

the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to .03% of phosphorous; less than or equal to .006 percent of sulfur; other elements representing .24%; and the remainder of iron, we are initiating this changed circumstances administrative review. Furthermore, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty orders with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments. This notice is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: July 6, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17646 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Results and Partial Recission of the Antidumping Duty Administrative Review of Mechanical Transfer Presses From Japan.

SUMMARY: On March 6, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. This review covers one manufacturer/exporter of MTPs during the period February 1, 1998 through January 31, 1999. We gave interested parties an opportunity to comment on our preliminary results.

Based on our analysis of the comments received, we have made certain changes in these margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–5255 or Maureen Flannery at (202) 482–3020, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (1999).

Background

On March 6, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on MTPs from Japan (65 FR 11764). We invited parties to comment on our preliminary results of review. We received comments from respondent, Komatsu, Ltd. (Komatsu). The Department has now completed this administrative review in accordance with section 751 of the Act.

Final Recission in Part of Antidumping Administrative Review

On April 12, 1999, we received a letter from Hitachi Zosen indicating that there were no entries of subject merchandise during the period of review (POR). On June 28, 1999, the petitioner withdrew its request for an administrative review with respect to Ishikawajima Harima Heavy Industries (IHI). On August 25, 1999, we requested that the U.S. Customs Service (Customs) contact us if they were suspending liquidation of entries of the subject merchandise during the period of review from Hitachi Zosen Corporation (Hitachi Zosen). We have received no such response. Therefore, we conclude that there have been no entries of subject merchandise made by Hitachi Zosen during the POR, and, thus, are rescinding the review with respect to Hitachi Zosen and IHI. *See Mechanical Transfer Presses from Japan: Preliminary Results and Recission in Part of Antidumping Duty Administrative Review,* March 6, 2000 (65 FR 11764).

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule

(HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (*See* ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992; and ''Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.,'' U.S. Department of Commerce, October 3, 1996.)

Analysis of Comments Received

All issues raised in Komatsu's case brief in this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated July 5, 2000, which is hereby adopted by this notice. A list of the issues which Komatsu has raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. A complete discussion of all issues raised in this review and the corresponding recommendations are in the public memorandum which is on file in the Central Records Unit, located in the Central Records Unit, room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Final Results of Review

We determine that the following percentage weighted-average margin exists for the period February 1, 1998 through January 31, 1999:

Manufacturer/exporter	Margin (percent)
Komatsu, Ltd	0.00

Because the weighted-average dumping margin is zero, we will instruct the Customs Service to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that Komatsu exported.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.51 percent. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Deduction of Movement Expenses from Starting Price
2. Double-Counting of Marine Insurance Expenses
3. Transfer Price vs. Cost for Movement and Packing Expenses

[FR Doc. 00–17647 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Notice of Extension of Time Limit for Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of 1998–1999 Antidumping Duty Administrative Review and New Shipper Review of Stainless Steel Bar From India.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the fourth administrative review and new shipper review of the antidumping duty order on stainless steel bar from India. The period of review for both segments of the proceeding is February 1, 1998 through January 31, 1999. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Meg Weems, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR part 351 (April 1999).

Statutory Time Limits

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 120 days after the date on which the notice of preliminary results was published in the **Federal Register**.

On March 31, 1999, the new shipper, Meltroll Engineering Pvt. Ltd., requested that the Department align the new shipper review with the administrative review (*see also* Meltroll letter dated 21 June 2000 specifically waiving statutory time limits). The time limits prescribed for a new shipper review under section 751(a)(2)(B)(iv) of the Act differ from those of an administrative review under section 751(a)(3) of the Act. Pursuant to Meltroll's request and 19 CFR 351.214(j)(3), the Department is now aligning both reviews and the time limits for the administrative review under section 751(a)(3) of the Act will now also apply to the new shipper review.

Extension

On March 8, 2000, we published the preliminary results of review (65 FR 12209). In our notice of preliminary results, we stated our intention to issue the final results of these reviews no later than July 6, 2000.

Due to limited resources, we find it not practicable to complete the reviews within the originally anticipated time limit. Specifically, the Department personnel responsible for completing these reviews will be on verification for a separate proceeding for several weeks preceding the current deadline. Therefore, the Department is extending the time limit for completion of the final results to not later than August 4, 2000, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–17644 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce, with the concurrence of the Attorney General, to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR Section 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 00–00004.'' A summary of the application follows.

Summary of the Application

Applicant: Overseas Distribution Solutions, L.L.C. (''ODS''), 531 Central Avenue, Suite D, Laurel, Mississippi, 39440.

Contact: Ronald A. Oleynik, Attorney.

Telephone: (202) 457–7183.

Application No.: 00–00004.

Date Deemed Submitted: June 29, 2000.

Members (in addition to applicant): AJC International, Inc., Atlanta, GA; Cagle's Inc., Atlanta, GA; Peterson Farms Inc. (d/b/a Crystal Lake), Decatur, AR; Fieldale Farms Corporation, Baldwin, GA; and Pilgrim's Pride Corp., Pittsburg, TX.

ODS seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products*

Poultry (chicken) meat (Boilers, Fryers, and Roaster Chickens).

2. *Services*

All services related to the export of Products.

3. *Technology Rights*

All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, service marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and sui generis forms of protection for databases and computer programs.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services, including, but not limited to: Consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research and analysis; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer

preferences; documentation and services related to compliance with customs requirements; joint ventures; inspection and quality control; transportation; shipping and export management; export licensing; insurance and financing; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; management information systems development and application; trade show exhibitions; professional services in the area of government relations and assistance with state and federal export assistance programs, such as the Export Enhancement and Market Promotion programs.

Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products and Services into the Export Markets, ODS and/or one or more of its Members may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Design and execute foreign marketing strategies for its Export Markets and collect and distribute information on trade opportunities in the Export Markets;

3. Prepare joint bids, establish export prices, and establish terms of sale in the Export Markets;

4. Design, develop and market generic corporate labels;

5. Enter into, terminate, amend or enforce exclusive or non-exclusive licensing agreements regarding its Products, Services, or Technology Rights with Export Intermediaries or other persons selling its Products in Export Markets;

6. Engage in joint promotional activities directly targeted at developing the Export Markets, such as: Arranging trade shows and marketing trips; providing advertising services; providing brochures, industry newsletters and other forms of product, service and industry information; conducting international market and product research; procuring international marketing, advertising and promotional services; and sharing the cost of these joint promotional activities among the Members;

7. Conduct product and packaging research and development exclusively for the export of the Products, such as meeting foreign regulatory requirements and foreign buyer specifications and identifying and designing for foreign buyer and consumer preferences;

8. Negotiate, enter into, and implement agreements with governments and other foreign persons regarding non-tariff trade barriers in the Export Markets, such as packaging requirements, and providing specialized packing operations and other quality control procedures to be followed by its Members in the export of Products into the Export Markets;

9. Advise and cooperate with agencies of the U.S. Government in establishing procedures regulating the export of Members' Products, Services and/or Technology Rights into the Export Markets;

10. Enter into, terminate, amend or enforce exclusive or non-exclusive sales agreements with Export Intermediaries, or other persons selling its Products for the transfer of title to Products, Services, and/or Technology Rights in the Export Markets;

11. Enter into, terminate, amend or enforce exclusive or non-exclusive pricing and/or consignment agreements for the sale and shipment of its Products and Services to Export Markets;

12. Allocate export sales, export orders and/or divide Export Markets, among Export Intermediaries, or other persons for the sale, licensing, and/or transfer of title to its Products, Services, and/or Technology Rights for sale in the Export Markets;

13. Enter into, terminate, amend or enforce territorial and customer restraints on Export Intermediaries, or other persons regarding the sale, licensing and/or transfer of title to its Products, Services, and/or Technology Rights for sale in the Export Markets;

14. Enter into, terminate, amend or enforce exclusive or non-exclusive agreements for the tying of its Products and Services, the setting of prices, and/or the distribution, shipping or handling of its Products or Services in the Export Markets;

15. Broker or take title to the Products;

16. Purchase Products from non-Members whenever necessary to fulfill specific sales obligations;

17. Solicit non-Members to become Members;

18. Communicate and process export orders;

19. Assist each Member in maintaining the quality standards necessary to be successful in the Export Markets;

20. Negotiate freight rate contracts with individual carriers and carrier conferences either directly or indirectly through shippers associations and/or freight forwarders;

21. Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services;

22. Enter into exclusive agreements to provide, produce, negotiate, contract, and administer Export Trade Services and Trade Facilitation Services;

23. Apply for and utilize applicable export assistance and incentive programs which are available within the governmental and private sectors, such as the USDA Export Enhancement and Market Promotion programs;

24. Refuse to quote prices for, or to market or sell, Products or Services to an Export Market or Markets, or to non-Member distributors, buyer and/or sales representatives who directly or indirectly market or sell to an Export Market or Markets;

25. Utilize common marking and identification of Product sold in the Export Markets; and

26. Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services and Export Trade Activities and Methods of Operation, including:

(a) Information regarding sales and marketing efforts and strategies in the Export Markets, including price, quality, quantity, and source; projected demand in the Export Markets for Products; customary terms of sale, prices and availability of Products independently committed by Members for sales in the Export Markets; prices and sales of Products in the Export Markets; and specifications by buyers and consumers in the Export Markets;

(b) Information regarding expenses specific to exporting to and within the Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight, port storage, commissions, export sales, documentation, financing and Customs duties or taxes;

(c) Information regarding U.S. and foreign legislation and regulations, including federal marketing order programs that may affect sales to the Export Markets;

(d) Information about ODS's or its Members' export operations, including sales and distribution networks established by ODS or its Members in the Export Markets, and prior export

sales by Members, including export price information; and

(e) Information about ODS's or its Members' credit and collections practices and problems, claims, and sales allowances related to Export Markets.

Definitions

1. *Export Intermediary* means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Member* means a person who has membership in ODS and who has been certified as a ''Member'' within the meaning of Section 325.2 (1) of the Regulations.

Dated: July 6, 2000.

Morton Schnabel,

Director Office of Export Trading Company Affairs.

[FR Doc. 00–17613 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070600B]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, August 2, 2000, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Renaissance Hotel Philadelphia Airport (formerly the Radisson), 500 Stevens Drive, Philadelphia, PA 19113, telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop 2001 quota recommendations for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 6, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17631 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070300C]

Endangered Species; Permits

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

ACTION: Receipt of applications to modify permits (1245, 1189); issuance of permits (1247), (1249); and modifications/amendments to existing permits (1177).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a request to modify permit (1245) from Mr. J. David Whitaker, of the South Carolina Department of Natural Resources (SCDNR), NMFS has received a request to modify permit (1189) from Dr. James Kirk, of the US Army Corps of Engineers (Corps); NMFS has issued permit 1247 to Mr. Tom Savoy, of CT Dept of Environmental Protection (CTDEP) and NMFS has issued permit 1249 to Mr. E.P. Taft, of Alden Research Laboratory (ALR); and NMFS has issued an amendment to a scientific research/enhancement permit to the U.S. Army Corps of Engineers, Portland District in Portland, OR (Corps)(1177).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 pm eastern standard time on August 11, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permit 1177: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

For permits 1247, 1245, 1189, 1249: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permits 1247, 1245, 1189, 1249: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

For permit 1177: Leslie Schaeffer, Portland, OR (ph: 503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS

regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*).

Fish

Coho salmon (*Oncorhynchus kisutch*): Threatened Southern Oregon/Northern California Coasts (SONCC).

Shortnose sturgeon (*Acipenser brevirostrum*).

Modification Requests Received

Permit 1245

SCDNR requests a modification to Permit 1245. Permit 1245 authorizes the annual take of up tp 200 threatened loggerhead turtle, 23 endangered Kemp's ridley, one green and one leatherback sea turtle in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals. Modification #1 would increase the authorized annual take of green turtles from one to ten annually and add five hawksbill turtles.

Permit 1189

The applicant requests a modification to Permit 1189. Permit 1189 authorizes the capture handling and release of up to 300 juvenile and adult shortnose sturgeon annually in the Ogeechee River, Georgia. The permit also authorizes sonic tagging of up to 20 adult shortnose sturgeon in the Ogeechee River. Modification #2 would authorize the use of external floy tags for up to 50 shortnose sturgeon annually. Permit 1189 expires December 31, 2002.

Permits and Modifications Issued

Permits Issued

Notice was published on March 3, 2000 (65 FR 16894) that Mr. Tom Savoy, of CT Dept of Environmental Protection applied for a scientific research permit (1247). The applicant requested a five year permit to lethally take up to 300 spawned eggs and larvae annually; capture, examine, collect stomach contents samples via gastrical lavage, PIT tag and release up to 400 adult and 100 juvenile sturgeon; and sonically tag up to 25 adult sturgeon annually. The research proposes to determine general seasonal movements and fine scale diurnal movement patterns as well as food habits and prey preferences of shortnose sturgeon in the Connecticut River below Holyoke Dam. Permit 1247 was issued on June 30,2000, authorizing take of listed species. Permit 1247 expires June 30, 2005.

Permit 1249

Notice was published on April 19, 2000 (65 FR 20954) that Mr. E.P. Taft, of Alden Research Laboratory applied for a scientific research permit (1249). The applicant proposes to take a maximum of 200 1+ yr captively bred shortnose sturgeon from the Conte Anadromous Fish Research Center to conduct applied fish passage facility research and development with the intent of identifying what fish passage design and operating conditions are necessary to maximize biological effectiveness of shortnose sturgeon diversion around dams in the Connecticut and Santee-Cooper River systems. Permit 1249 was issued on July 6, 2000, authorizing take of listed species. Permit 1249 expires June 30, 2001.

Permit Amendment Issued

On June 30, 2000, NMFS issued an amendment to the Corps' scientific research/enhancement permit 1177. The amendment provides an extension of the duration of the permit through June 30, 2001. The permit was due to expire on June 30, 2000. The permit authorizes take of adult and juvenile, threatened, SONCC coho salmon associated with scientific research and an adult fish trap-and-haul program at Elk Creek Dam on the Rogue River in OR. The purpose of the trap-and-haul program is to move returning ESA-listed adult fish above Elk Creek Dam, an impassable barrier for adult salmonids, so that the fish may use the habitat upstream of the dam for natural spawning. To determine the annual spawning success of the fish upstream of the dam, ESA-listed juvenile fish will be observed by snorkeling. In addition, ESA-listed adult fish carcasses will be examined for evidence of spawning and immediately returned to the stream. Permit 1177 expires on June 30, 2001.

Dated: July 6, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–17628 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

July 6, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 13, 2000.

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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing, group swing, and the recrediting of unused carryforward.

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 64 FR 71982, published on December 22, 1999). Also

see 64 FR 69228, published on December 10, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on July 13, 2000, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,514,466,758 square meters equivalent.
Sublevels in Group I	
200	798,180 kilograms.
218	12,123,172 square meters.
219	2,663,554 square meters.
226	12,094,471 square meters.
237	2,227,444 dozen.
239	3,297,032 kilograms.
300/301	2,484,553 kilograms.
313	45,943,331 square meters.
314	53,450,809 square meters.
317/326	23,332,435 square meters of which not more than 4,463,953 square meters shall be in Category 326.
331	5,580,828 dozen pairs.
333	109,251 dozen.
334	353,835 dozen.
335	417,558 dozen.
336	185,543 dozen.
338/339	2,457,463 dozen of which not more than 1,816,459 dozen shall be in Categories 338–S/339–S [12].
340	839,239 dozen of which not more than 419,619 dozen shall be in Category 340–Z [13].
341	719,352 dozen of which not more than 436,317 dozen shall be in Category 341–Y [14].
342	283,509 dozen.
345	134,465 dozen.
347/348	2,419,985 dozen.
350	182,417 dozen.
351	596,599 dozen.
352	1,725,269 dozen.
359–C	672,436 kilograms.
359–V	954,257 kilograms.
360	8,642,321 numbers of which not more than 5,645,274 numbers shall be in Category 360–P [15].
361	4,565,395 numbers.
362	7,633,987 numbers.
363	23,479,014 numbers.
369–D	5,092,785 kilograms.
369–H	5,530,233 kilograms.
369–L	3,669,707 kilograms.
410	1,079,671 square meters of which not more than 865,473 square meters shall be in Category 410–A [16] and not more than 849,296 square meters shall be in Category 410–B [17].
433	22,003 dozen.
434	14,337 dozen.
435	25,841 dozen.
436	16,222 dozen.
438	27,858 dozen.
440	40,557 dozen of which not more than 23,175 dozen shall be in Category 440–M [18].
442	42,931 dozen.
443	135,706 numbers.
444	223,614 numbers.
445/446	298,874 dozen.
447	72,893 dozen.
448	23,956 dozen.
607	3,588,736 kilograms.
611	5,950,144 square meters.
613	8,419,448 square meters.
614	13,230,559 square meters.
615	27,543,621 square meters.
617	19,244,449 square meters.
631	1,440,856 dozen pairs.
633	62,017 dozen.
634	687,556 dozen.
635	725,251 dozen.
636	585,944 dozen.
638/639	2,584,271 dozen.
640	1,428,730 dozen.
641	1,412,458 dozen.
642	365,364 dozen.
643	551,517 numbers.
644/844	3,910,019 numbers.
645/646	884,600 dozen.
647	1,618,842 dozen.
648	1,164,438 dozen.
649	1,010,675 dozen.
650	128,875 dozen.
651	827,671 dozen of which not more than 147,358 dozen shall be in Category 651–B [19].
652	3,029,324 dozen.
659–C	451,552 kilograms.
659–H	3,079,901 kilograms.
659–S	669,556 kilograms.
666	3,837,643 kilograms of which not more than 1,385,151 kilograms shall be in Category 666–C [20].
669–P	2,237,063 kilograms.
670–L	17,471,826 kilograms.
831	632,536 dozen pairs.
833	32,336 dozen.
835	131,382 dozen.
836	306,009 dozen.
840	511,083 dozen.
842	296,248 dozen.
845	2,513,696 dozen.
846	193,561 dozen.
847	1,335,870 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [21], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [22], as a group.	132,076,642 square meters equivalent.

Category	Adjusted twelve-month limit [1]
Group III	
201, 220, 222, 223, 224–V [23], 224–O [24], 225, 227, 229, 369–O [25], 400, 414, 464, 465, 469, 600, 603, 604–O [26], 606, 618–622, 624–629, 665, 669–O [27] and 670–O [28], as a group.	274,546,086 square meters equivalent.
Sublevel in Group III	
224–V	3,932,558 square meters.
225	6,784,411 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	12,478,390 square meters equivalent.
Levels not in a Group	
369–S [29]	658,108 kilograms.
863–S [30]	9,314,276 numbers.
870	34,821,214 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[12] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[13] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[14] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[15] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[16] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[17] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[18] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[19] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[20] Category 666–C: only HTS number 6303.92.2000.

[21] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[22] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[23] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[24] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[25] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

[26] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[27] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[28] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[29] Category 369–S: only HTS number 6307.10.2005.

[30] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17589 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

July 6, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 13, 2000.

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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

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 64 FR 71982, published on December 22, 1999). Also see 64 FR 70223, published on December 16, 1999.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on

January 1, 2000 and extending through December 31, 2000.

Effective on July 13, 2000, you are directed to adjust the current limits for the following categories, as provided for under the current bilateral textile agreement between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit [1]
334/634	165,070 dozen.
335/635	284,249 dozen.
340/640	306,956 dozen.
347/348	1,159,037 dozen.
647/648/847	381,341 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

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,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17590 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 11, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOC, 550 D Street West, Suite 1, Randolph AFB, TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFRS/RSOC, Officer Accessions Branch at (210) 652–4334.

Title, Associated Form, and OMB Number: Health Profession Accession Forms, AETC Forms 1402 and 1437, OMB Number 0701–0078.

Needs and Uses: These forms are used by field recruiters in the processing of health professions applicants applying for a commission in the United States Air Force.

Affected Public: Individuals or households.

Annual Burden Hours: 3,600.

Number of Respondents: 3,600.

Responses Per Respondent: 1.

Average Burden Per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian candidates applying for a commission in the United States Air Force as healthcare officers. These forms provide pertinent information to facilitate selection of candidates for a commission.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17542 Filed 7–11–00; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice To Extend the Public and Agency Scoping Period for the Initial F–22 Operational Beddown Environmental Impact Statement (EIS)

The United States Air Force is issuing this notice to advise the public of its decision to extend the public and agency scoping period for the preparation of the Draft EIS which will assess the potential environmental impacts of a proposal to beddown the initial F–22 Operational Wing.

The comment period for scoping related comments has been extended to October 31, 2000 to ensure sufficient time to consider public and agency comments in the screening process and preparation of the Draft EIS. Comments should be submitted to the address below.

HQ ACC/CEVP, 129 Andrews Street, Suite 102, Langley AFB, VA 23665–2769, Attn: Ms. Brenda Cook.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–17543 Filed 7–11–00; 8:45 am]

BILLING CODE 5001–05–P

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

Emergency Oil and Gas Guaranteed Loan Program; Guarantee Agreement

ACTION: Proposed collection; comment request.

SUMMARY: The Emergency Oil and Gas Guaranteed Loan Board, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before September 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Email Lengelme@doc.gov., Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Daniel J. Rooney, Executive Secretary, Emergency Oil and Gas Guaranteed Loan Board, Room 2500, 1401 Constitution Ave, NW., Washington, DC 20230; phone: (202) 219–0575, and fax: (202) 219–0585.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to ''The Emergency Oil and Gas Guaranteed Loan Act of 1999,'' Chapter 2, Public Law 106–51, the Emergency Oil and Gas Guaranteed Loan Board developed a guarantee agreement that must be signed by qualified oil and gas companies that receive loan guarantees. The information being collected will be used and is necessary to ensure that the applicant is meeting the conditions of the guarantee agreement and to protect the Federal government from default

and/or fraud. The information is also required as supporting documentation for annual or other audits that may be conducted by or on behalf of the Board or by the General Accounting Office (GAO) for as long as the guarantee agreement is in effect.

II. Method of Collection

The application forms, the guarantee documents and the National Environmental Policy Act submission forms will all be available on the Department of Commerce's website. Applicants may download the required forms.

III. Data

OMB Number: 3003–0002.

Form Number: ELB–1.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 23.

Estimated Time Per Response: 80 hours.

Estimated Total Annual Burden Hours: 1,475 hours.

Estimated Total Annual Cost: $124,900 (Government $60,000, Respondents $64,900).

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 7, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17592 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–P

EMERGENCY STEEL LOAN GUARANTEE BOARD

Emergency Steel Loan Guarantee Program; Guarantee Agreement

ACTION: Proposed collection; comment request.

SUMMARY: The Emergency Steel Loan Guarantee Board, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Email Lengelme@doc.gov., Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Daniel J. Rooney, Executive Secretary, Emergency Steel Loan Guarantee Board, Room 2500, 1401 Constitution Ave, NW., Washington, DC 20230; phone: (202) 219–0575, and fax: (202) 219–0585.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to ''The Emergency Steel Loan Guarantee Act of 1999,'' Chapter 1, Public Law 106–51, the Emergency Steel Loan Guarantee Board developed a guarantee agreement that must be signed by qualified steel companies that receive loan guarantees. The information being collected will be used and is necessary to ensure that the applicant is meeting the conditions of the guarantee agreement and to protect the Federal government from default and/or fraud. The information is also required as supporting documentation for annual or other audits that may be conducted by or on behalf of the Board or by the General Accounting Office (GAO) for as long as the guarantee agreement is in effect.

II. Method of Collection

The application forms, the guarantee documents and the National Environmental Policy Act submission forms will all be available on the Department of Commerce's website. Applicants may download the required forms.

III. Data

OMB Number: 3004–0002.

Form Number: ELB–1.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 23.

Estimated Time Per Response: 80 hours.

Estimated Total Annual Burden Hours: 1,475 hours.

Estimated Total Annual Cost: $124,900 (Government $60,000, Respondents $64,900).

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 7, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–17591 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–364–000]

Clear Creek Storage Company, L.L.C.; Notice of Tariff Filing

July 6, 2000.

Take notice that on June 30, 2000, Clear Creek Storage Company, L.L.C. (Clear Creek) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective August 1, 2000:

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 24
Original Sheet No. 25
Original Sheet No. 26
First Revised Sheet No. 69
Original Sheet No. 73A
First Revised Sheet No. 74
Original Sheet No. 99
Original Sheet No. 100
Original Sheet No. 101
Original Sheet No. 102
Original Sheet No. 103

Clear Creek states that the proposed tariff sheets, when approved, will enable it to implement unbundled sales service as provided by 18 CFR part 284, subpart J.

Clear Creek explains that on March 2, 1998, it filed an application in Docket No. CP98–256–000, pursuant to section 7 of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to convert a natural gas production reservoir to a natural gas storage facility, to construct appurtenant facilities and to operate the storage field and related facilities for the sole use of Clear Creek's two owners, Questar Energy Trading Company and Montana Power Ventures, Inc.

Clear Creek explains further that on September 1, 1998, the Commission accepted Clear Creek's application and authorized the company to (1) convert a natural gas production reservoir to a gas storage facility, (2) operate the facility on an open-access basis and (3) perform certain storage-related transportation services under Part 284, Subpart G. Clear Creek states that as the holder of a Part 284, Subpart G certificate, the company automatically has blanket authority to provide unbundled sales in accordance with the provisions of Part 284, Subpart J of the Commission's regulations.

Clear Creek explains that although it has blanket authority to provide unbundled firm and interruptible sales of natural gas, Clear Creek's effective FERC Gas Tariff does not contain tariff provisions applicable to an unbundled sales service. Consequently, as required by 18 CFR 284.286 and 284.287, Clear Creek submits proposed tariff sheets that incorporate the provisions of Subpart J and explain how Clear Creek will comply with the Commission's standards applicable to unbundled sales service.

Clear Creek states that a copy of this filing has been served upon its customers and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17557 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–362–000]

K N Wattenberg Transmission Limited Liability Company; Notice of Tariff Filing

July 6, 2000.

Take notice that on June 30, 2000, K N Wattenberg Transmission Limited Liability Company (KNW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective August 1, 2000.

In Docket No. RM96–1, the Commission has required that interstate pipelines communicate with their customers via the Internet. The purpose of this compliance filing is to make tariff changes entailed by that requirement and to incorporate the use of a new computer system as previously described in the Request for Extension of Time for KNW in Docket No. RM96–1–009, filed with the commission on May 24, 2000.

KNW requests that the Commission grant any other waivers of its regulations that the Commission may deem necessary to accept KNW's tariff sheet(s) to be effective August 1, 2000.

KNW states that copies of the filing were served upon KNW's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17555 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–150–002]

Millennium Pipeline Company, L.P.; Notice of Amendment

July 6, 2000.

Take notice that on June 28, 2000, Millennium Pipeline Company, L.P. (Millennium), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP09–150–002 an amendment to its pending application filed in Docket No. CP98–150–000, to reflect a route variation in Westchester County, New York, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Millennium states that Millennium and the Public Service Commission of the State of New York (PSCNY) have identified an alternative pipeline route in Westchester County, New York which they believe could satisfy the safety concerns that have been expressed by the PSCNY. Millennium indicates that the alternative route for the most part departs from the powerline right-of-way of Consolidated Edison Company of New York, Inc. and instead follows public highways and bike trails for most of its length.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 27,

2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved.

Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Millennium to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–17548 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–90–000]

Morgan Stanley Capital Group Inc., Complainant, v. New York Independent System Operator, Inc. Respondent; Notice of Complaint

July 6, 2000.

Take notice that on July 5, 2000, Morgan Stanley Capital Group, Inc. (MSCG), tendered for filing a complaint pursuant to Section 206 of the Federal Power Act against the New York Independent System Operator, Inc. (NYISO) alleging that the NYISO has unlawfully denied power marketers such as MSCG access to Real-Time markets through its bidding restrictions excluding non-physical transactions in those NYISO markets. MSCG alleges that these bidding restrictions unduly discriminate against certain market participants and serve to distort the marketplace, restrict fluidity, and result in incorrect pricing signals.

Copies of the filing were served upon the NYISO and other interested parties.

Any person desiring to be heard or to protest this filing 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). All such motions or protests must be filed on or before July 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before July 17, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–17558 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–361–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 6, 2000.

Take notice that on June 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 238 and Fourth Revised Sheet No. 505, to be effective August 1, 2000.

Natural states that the filing is being submitted to set out a correction to its Tariff relating to the allocation of storage injections by pipeline leg under Natural's Rate Schedule NSS. A related change has been made in the Rate Schedule NSS pro forma service agreement. Natural further states that the allocation provision modified in the present filing was not updated to reflect a tariff change giving more flexibility under Natural's Rate Schedule NSS in contracting by pipeline leg.

Natural requests waiver of the Federal Energy Regulatory Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective August 1, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17554 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–363–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 6, 2000.

Take notice that on June 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective August 1, 2000.

Natural states that the purpose of this filing is to implement a new Rate Schedule FFTS, under which Natural would provide a flexible firm transportation service. Conforming tariff changes have also been made in the General Terms and Conditions of the Tariff and in the pro forma service agreement.

Natural requests waiver of the Federal Energy Regulatory Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective August 1, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17556 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–360–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

July 6, 2000.

Take notice that on June 30, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of July 1, 2000.

Fifty-First Revised Sheet No. 14
Seventy-Second Revised Sheet No. 15
Fifty-First Revised Sheet No. 16
Seventy-Second Revised Sheet No. 17
Thirty-Seventh Revised Sheet No. 14A
Forty-Third Revised Sheet No. 14A
Thirty-Seventh Revised Sheet No. 16A
Forty-Third Revised Sheet No. 17A
Second Revised Sheet No. 34B
First Revised Sheet No. 34C
First Revised Sheet No. 34D
Fifth Revised Sheet No. 41A
Sixth Revised Sheet No. 42
Seventh Revised Sheet No. 53
Fourth Revised Sheet No. 53A
Third Revised Sheet No. 53B

Southern has eliminated from its effective tariff certain surcharges and tariff provisions used by Southern to recover Order No. 636 transition costs associated with Account No. 858 (T&C Surcharge) and Southern LNG Inc (SEC Surcharge).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be reviewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17593 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–071; Georgia]

Georgia Power Company; Notice of Availability of Environmental Assessment

July 6, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Energy Projects has prepared an environmental assessment (EA) on the Georgia Power Company's application for approval of a new commercial dock facility. The Georgia Power Company proposes to permit Mr. Scott Jackson (permittee), to construct and operate a commercial dock facility on Lake Sinclair's Beaver Dam Creek. The proposed facility includes three open boat docks with a total of 24 slips, that can accommodate up to 42 watercraft; a fuel dock; a boat ramp; and a boat drop. The proposed facility would be used in conjunction with the permittee's planned commercial development on his adjoining property. The Sinclair Project is located on the Oconee River, in Putnam and Baldwin Counties, Georgia.

The EA is attached to a Commission order issued on June 27, 2000 for the above application. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the EA can also be obtained through the Commission's homepage at *http://www.ferc.fed.us.* In the EA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action

significantly affecting the quality of the human environment.

David P. Boergers,

Secretary.

[FR Doc. 00–17551 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–172; Oklahoma]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

July 6, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 53 FR 47910), the Office of Energy Projects has prepared a mail environmental assessment (FEA) on the Grand River Dam Authority's application for approval of a new commercial dock facility. The Grand River Dam Authority proposes to permit Lewis Perrault, d/b/a/ Lewie Development Company (permittee), to construct and operation a commercial dock facility on Grand Lake's Grand Craft Cove, about 2 miles from the Pensacola dam. The proposed facility includes nine boat slips and an area for temporary boat mooring and will be used in conjunction with the permittee's planned commercial development on his adjoining property. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA is attached to a Commission order issued on June 27, 2000 for the above application. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the FEA can also be obtained through the Commission's homepage at *http://www.ferc.fed.us.* In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

David P. Boergers,

Secretary.

[FR Doc. 00–17550 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of AmerenUE Request To Use Alternative Procedures in Preparing a License Application

July 6, 2000.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission:

a. Type of Application: Request to use alternative procedures to prepare a new license application.

b. Project No.: FERC No. 459.

c. Date filed: June 14, 2000.

d. Applicant: Union Electric Company (d/b/a AmerenUE).

e. Name of Project: Osage Project.

f. Location: On the Osage River, in Benton, Camden, Miller and Morgan Counties, central Missouri. The project occupies federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Alan Sullivan, Licensing Project Manager, AmerenUE, 617 River Road, Elden, MO 65020, (573) 365–9329.

i. FERC Contact: Any questions on this notice should be addressed to Allan Creamer at (202) 219–0365.

j. Deadline for Comments: 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The peaking project consists of an 2,583-foot-long, 148-foot-high concrete dam; a 92-mile-long, 55,000-acre impoundment at a full pool elevation of 660 feet mean sea level; a powerhouse containing eight main and two in-house generating units, having a total installed capacity of 176,200 kilowatts; and appurtenant facilities. The project generates approximately 675,000 megawatt-hours of electricity annually.

l. AmerenUE has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. AmerenUE has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. AmerenUE has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on AmerenUE's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. AmerenUE will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

AmerenUE has met with federal and state resources agencies, NGOs, elected officials, flood control and downstream interests, environmental groups, business and economic development organizations, the boating industry, and members of the public regarding the Osage Project. AmerenUE intends to file 6-month progress reports during the alternative procedures process that leads to the filling of a license application by February 28, 2004.

David P. Boergers,

Secretary.

[FR Doc. 00–17549 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

July 6, 2000.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 2355–005.

c. Date Filed: June 13, 2000.

d. Applicants: PECO Energy Company and Exelon Generation Company, LLC (to be formed).

e. Name of Project: Muddy Run.

f. Location: The project is located on the Susquehanna River in Lancaster and York Counties, Pennsylvania. The project does not occupy federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contacts: Vilna Waldron Gaston, H. Alfred Ryan, Assistant General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, (215) 841–4265 and Brian J. McManus, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NE, Washington, DC 20001–2113, (202) 879–5452.

i. FERC Contact: Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. Deadline for filing comments and or motions: August 11, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (2355–005) on any comments or motions filed.

k. Description of Transfer: The applicants propose a transfer of the license for Project No. 2355 from PECO Energy Company (PECO) to Exelon Generation Company, LLC (GenCo), a still-to-be incorporated affiliate. GenCo will be a wholly-owned subsidiary of Exelon Corporation, a currently existing subsidiary of PECO. The transfer is being sought as part of a corporate restructuring of PECO. The application includes a proposal providing for PECO to operate the project's primary transmission lines according to the terms and conditions of a lease agreement.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a part to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–17553 Filed 7–11–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6734–1]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amened (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (''EPA'') on May 26, 1999, to address a lawsuit filed by the Midwest Ozone Group and the West Virginia Chamber of Commerce (collectively referred to as ''MOG''). This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses EPA's alleged failure to meet mandatory deadlines under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate federal implementation plans for certain areas establishing (1) attainment demonstrations; (2) inspection and maintenance (''I/M'') programs, and (3) 15% rate-of-progress (''ROP'') requirements. *Midwest Ozone Group et. al.,* v. *EPA,* No. 1:00CV01047 (D.D.C.).

DATES: Written comments must be received by August 11, 2000.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Copies of the proposed consent decree are available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on May 26, 2000.

SUPPLEMENTARY INFORMATION: MOG alleges that EPA has a mandatory duty to promulgate federal implementation plans (''FIPs'') establishing (1) attainment demonstrations for the Greater Connecticut ozone nonattainment area; the Springfield, Massachusetts ozone nonattainment area; and the New York and Connecticut portions of the New York-Northern New Jersey-Long Island ozone nonattainment area; (2) I/M programs for Portland, Maine; Providence, Rhode Island; and the portions of the Boston-Lawrence-Worcester and Portsmouth-Dover-Rochester ozone nonattainment areas located in New Hampshire; and (3) a 15% ROP program for the Springfield, Massachusetts Ozone nonattainment area.

The proposed consent decree provides, in part, that EPA will promulgate full attainment demonstration FIPs by May 15, 2001 for the Greater Connecticut and Springfield ozone nonattainment areas if EPA has not fully approved attainment demonstration SIPs for each area as of

that date. The consent decree provides that EPA will promulgate full attainment demonstration FIPs for the New York and Connecticut portions of the New York-Northern New Jersey-Long Island ozone nanattaiinment by June 14, 2002 if EPA has not fully approved attainment demonstration SIPS for each area as of that date.

This portion of the consent decree addresses the same issues for these four areas as is addressed in a partial consent decree with Natural Resources Defense Council, et al., for which EPA published notice on December 21, 1999, 64 FR 71453, and that was entered into by the parties on May 31, 2000. The FIP proposal and promulgation dates in the two consent decrees are consistent.

The consent decree also provides that EPA will promulgate I/M FIPs for four ozone nonattainment areas by October 31, 2001 if EPA has not fully approved enhanced I/M SIPs for each area by that date. The four areas are: Portland, Maine; Providence, Rhode Island; and the portions of the Boston-Lawrence-Worcester and Portsmouth-Dover-Rochester ozone nonattainment areas located in New Hampshire.

Finally, the consent decree provides that EPA will promulgate a 15% ROP FIP for the Springfield, Massachusetts ozone nonattainment area by April 2, 2001 if EPA has not fully approved a 15% ROP SIP for the area by that date.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the final consent decree will be entered with the court and will establish deadlines for promulgation of federal implementation plans in the absence of approved state plans.

Dated: June 23, 2000.

Gary S. Guzy,

General Counsel.

[FR Doc. 00–17616 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6734–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) will meet on Friday, July 28, 2000 from 11:00 am to 1:00 pm Eastern Daylight Time to review a report developed by its Technical Subcommittee on Fine Particle Monitoring. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available (phone lines will be very limited). Additional instructions about how to participate in the meeting can be obtained by calling Ms. Diana Pozun prior to the meeting at (202) 564–4544, or via e-mail at <pozun.diana@epa.gov>.

Background

The CASAC Technical Subcommittee on Fine Particle Monitoring (the Subcommittee) was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter. Most recently, EPA has asked the Subcommittee to review EPA's report to Congress as required by Section 6102(e) of the Transportation Equity Act for the 21st Century (see 65 **Federal Register** 35926, June 6, 2000 for more details).

Purpose of the Meeting

At this meeting, the Clean Air Scientific Advisory Committee, chartered under 42 U.S.C. 7409, will review a report (*Clean Air Scientific Advisory Committee Review of the US EPA Response to Section 6102(e) of the Transportation Equity Act for the 21st Century*) developed by its Technical Subcommittee on Fine Particle Monitoring.

Availability of Review Materials

Single copies of the USEPA review document *Response to Section 6102(e) of the Transportation Equity Act for the 21st Century,* (Report number: EPA 600/R–00/033, May 2000) and the Subcommittee's draft review report (*Clean Air Scientific Advisory Committee Review of the US EPA Response to Section 6102(e) of the Transportation Equity Act for the 21st Century*) are available from Ms. Diana Pozun, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Ms. Pozun can also be reached by telephone at (202) 564–4544, fax at (202) 501–0582, or e-mail: <pozun.diana@epa.gov>. The Subcommittee's draft report is also available on the SAB Website (*www.epa.gov/sab*) under the *Reports* heading, and *Draft Reports* subheading.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at <flaak.robert@epa.gov>. A copy of the draft agenda is available from Ms. Diana Pozun at (202) 564–4544 or by FAX at (202) 501–0582 or via e-mail at <pozun.diana@epa.gov>.

Members of the public who wish to make a brief oral presentation to the Subcommittee (in Room 6013 only) must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Daylight Savings Time, Thursday, July 20, 2000 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization; 15 minutes total. The request should identify the name of the individual making the presentation, and the organization (if any) they will represent. *Please note:* If we receive more requests than we can accommodate, time of receipt in the CASAC office will determine priority, with the first three requests granted time (additional requests may be granted to the extent that time is available, as determined by the CASAC Chair at the time of the meeting). All others will have to provide written comments. Written comments of any length may be submitted to Mr. Flaak at any time until the date of the meeting. Please provide at least 25 copies. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Individuals requiring special accommodation at this meeting,

including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 6, 2000.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00–17617 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–949; FRL–6591–8]

Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–949, must be received on or before August 11, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION:** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–949 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5409; e-mail address: dani.daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production.
	112	Animal Production.
	311	Food manufacturing.
	32532	Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. In person. The Agency has established an official record for this action under docket control number PF–949. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–949 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–949. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requiremements.

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

0F6119

EPA has received a pesticide petition 0F6119 from Aventis CropScience, 2 T.W. Alexander Drive, Research Triangle Park, Raleigh, NC, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of clofentezine in or on the raw agricultural commodity grapes at 0.35 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

APOLLO(r) SC Ovicide/Miticide (active ingredient clofentezine) is registered for use on apples, pears, almonds, walnuts, apricots, cherries, nectarines, and peaches to control European red mites and several spider mite species. It is an environmentally-friendly, IPM-compatible product used at low dose rates, and only once per season. Clofentezine has been shown to be relatively non-toxic in studies conducted on mammals, fish, birds, aquatic invertebrates, predacious and other beneficial mites, bees, algae, and plants by establishing a tolerance for residues of clofentezine in or on the raw agricultural commodity grapes at 0.026 ppm to 0.33 ppm.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of clofentezine has been studied in three crops representative of the use pattern for APOLLO SC: apples (pome fruit), peaches (stone fruit), and grapes (vines/small fruit). In each case, unchanged clofentezine was the major extractable residue present. Non-extractable residues (fiber-bound) were negligible. Minor amounts of 2-chlorobenzonitrile, the major photo-degradation product, were detected, predominantly on the fruit surface. Dissipation of this component may be a significant route in the degradation of clofentezine on the surface of these crops. The nature of the residue in grapes, and in all the other registered crops, is therefore adequately understood. The residue of concern is the parent, clofentezine.

2. *Analytical method.* EPA recently approved an analytical method for clofentezine on apples at a limit of quantitation (LOQ) of 0.01 ppm. In support of that effort, Aventis submitted an independent laboratory validation of the method which involves organic extraction and then cleanup, followed by high-pressure liquid chromatography. This method is suitable for enforcement for the registration of APOLLO SC ovicide/miticide on apples.

For the requested use on grapes, an analytical method similar to the above was previously submitted to the Agency. This method was deemed suitable for enforcement of the tolerances proposed in a previous tolerance petition. Similar analytical methods for enforcement purposes are available for all the other registered crops and relevant animal tissues/milk/fat.

3. *Magnitude of residues.* Extensive field residue trials have been conducted with APOLLO SC on grapes throughout the major growing regions of the United States. Application at 21 days pre-harvest interval (PHI) at the maximum use rate resulted in residues of clofentezine on fresh grapes of 0.026 ppm to 0.33 ppm. In processing studies on grapes which had been treated with APOLLO SC, residues in the processed commodity grape juice were lower than those in the raw agricultural commodity grapes; and residues in raisins were shown to also be lower than those in the raw agricultural commodity.

Residue trials were conducted for APOLLO SC on apples, pears, apricots, cherries, nectarines, peaches, almonds, and walnuts at the maximum use rates and minimum (PHIs) throughout the

major growing regions of the United States. Residues in apples ranged from <0.01 ppm to 0.44 ppm. Residues in pears ranged from <0.01 ppm to 0.2 ppm. Residues in stone fruit ranged from <0.01 ppm to 0.66 ppm. Residues on almond hulls ranged from 0.93 ppm to 2.4 ppm, on almond nut meats from <0.05 ppm to 0.3 ppm, and on walnuts <0.02 ppm. Tolerances were therefore established on apples (0.5 ppm); pears (0.5 ppm); apricots, cherries, nectarines, and peaches (1.0 ppm); almond nutmeats (0.5 ppm); almond hulls (5.0 ppm); and walnuts (0.02 ppm).

Ruminant feeding studies were conducted to determine the magnitude of the clofentezine-derived residues in the tissues and milk of cows. Four groups of three dairy cattle were fed technical clofentezine in the diet at dose levels of 0, 10, 30, and 100 ppm over a period of 28 days. Daily milk samples were taken and at the termination of the study the following organs were analyzed: liver, kidney, heart, muscle, peritoneal fat, and subcutaneous fat. At the feeding level of 10 ppm, residues were 0.3 ppm in liver and <0.05 ppm in kidney, milk, and other tissues. EPA established tolerances for cattle, goats, hogs, horses, and sheep as follows: 0.05 ppm in meat, fat, and meat by-products except liver; 0.4 ppm in liver; and 0.01 ppm in milk.

B. Toxicological Profile

The toxicology of clofentezine has been thoroughly evaluated by EPA as part of previous regulatory actions. The studies are considered to be valid, reliable and adequate for the purposes of evaluating potential health risks and for establishing tolerances. The primary studies submitted in support of the registration of clofentezine are summarized below.

1. *Acute toxicity.* A relatively low degree of acute toxicity and irritation potential. It is classified as toxicity category III for oral, dermal and inhalation toxicity, and toxicity category IV for eye and skin irritation. The acute oral LD_{50} of clofentezine was determined to be >5,2000 milligrams/kilograms (mg/kg) in rats and mice, >3,200 mg/kg in hamsters, and >2,000 mg/kg in beagle dogs. The acute rate dermal LD_{50} was >2,100 mg/kg. Clofentezine is considered to be practically non-irritating to eyes and skin but is considered to be a week skin sensitizer in the guinea pig maximization assay.

APOLLO SC is classified as toxicity category IV for oral toxicity and skin irritation, and as toxicity category III for dermal toxicity and eye irritation. The acute oral LD_{50} of APOLLO SC was determined to be >5,000 mg/kg in rats; the acute dermal LD_{50} in rats was >2,400 mg/kg. APOLLO SC is considered slightly irritating to eyes and skin.

2. *Genotoxicty.* No evidence of genotoxicity was noted in a battery of in vitro and in vivo studies. Studies submitted included Ames Salmonella and mouse lymphoma gene mutation assay, a mouse micronucleus assay, a rat dominant lethal assay, and a gene conversion and mitotic recombination assay in yeast.

3. *Reproductive and developmental toxicity.* A multigeneration rate reproduction study was conducted a dietary concentrations of 0, 4, 40, and 400 ppm. The parental no observed adverse effect level (NOAEL) was 40 ppm based on slightly reduced body weights (bwt), increased liver weights and hepatocellular hypertrophy at 400 ppm. No treatment-related reproductive effects were noted at any dose level.

In a rate developmental toxicity study, clofentezine was administered by gavage at dose levels of 0, 320, 1, 280 and 3,2000 mg/kg/day during gestation days 6 to 20. Evidence of maternal toxicity was noted at 3,200 mg/kg/day and consisted of decreased weight gain, increased liver weights and centrilobular hepatocellular enlargement. No developmental effects were observed at any dose level.

In a rabbit developmental toxicity study, clofentezine was administered by gavage at dose levels of 0, 250, 1,000 and 3,000 mg/kg/day during gestation days 7 to 28. Slight maternal toxicity (decreased maternal food consumption and weight gain) and a slight decrease in fetal weight were noted at 3,000 mg/kg/day. Thus, the NOAEL was considered to be 1,000 mg/kg/day for both maternal and developmental effects.

4. *Subchronic toxicity.* In a preliminary 90-day feeding study designed to select a suitable high dose level for a subsequent chronic rate study, clofentezine was administered to rats at dietary concentrations of 0, 3,000, 9,000 and 27,000 ppm. A significant reduction in weight gain was noted at 9,000 and 27,000 ppm. In addition, a marked, dose-related hepatomegaly and centrilobular hepatocyte enlargement was noted in all treatment groups. In a subsequent 90-day feeding study, clofentezine was administered to rats at dietary concentrations of 0, 40, 400, and 4,000 ppm. Slightly reduced weight gain, alterations in serveral clinical pathology parameters, increased liver, kidney and spleen weights, and centrilobular hepatocyte enlargement were noted at 400 and/or 4,000 ppm. Thus, 40 ppm (~ 2.8 mg/kg/day) was considered to be the NOAEL for this study.

Clofentezine was administered to beagle dogs for 90 days at dietary concentrations of 0, 3,200, 8,000 and 20,000 ppm. Increased liver weights were noted at all dose levels but no histopathological changes nor any other treatment-related effects were observed.

5. *Chronic toxicity.* In a 12-month feeding study, clofentezine was administered to beagle dogs at dietary concetrations of 0, 50, 1,000, and 20,000 ppm. An increase in adrenal and thyroid weights, as well as moderate hepatotoxicity consisting of minimal periportal hepatocyte enlargement with cytoplasmic eosinophilia, hepatomegaly and increased plasma cholesterol, triglycerides and alkaline phosphatase levels, were noted at 20,000 ppm. Evidence of slight hepatotoxicity was also noted at 1,000 ppm. Thus, the NOAEL for this study was considered to be 50 ppm (~1.25 mg/kg/day).

In a 27-month feeding study, clofentezine was administered to rats at dietary concentrations of 0, 10, 40, and 400 ppm. Effects noted at 400 ppm were limited to the liver and thyroid, primarily of males, and consisted of increased liver weights, a variety of microscopic liver lesions (centrilobular hepatocyte hypertrophy and vacuolation, focal cystic hepatocellular degeneration and diffuse distribution of fat deposits), increased serum thyroxine levels, and a slight but statistically significant increase in the incidence of thyroid follicular cell tumors. The NOAEL was considered to be 40 ppm (~2 mg/kg/day).

Clofentezine was not oncogenic to mice when administered for 2 years at dietary concentrations of 0, 50, 500, and 5,000 ppm. Decreased weight gain, increased liver weights, and increased mortality were noted at 5,000 ppm. An increased incidence of eosinophilic or basophilic hepatocytes was noted at 5,000 ppm, and possibly 500 ppm.

Numerous studies were conducted to investigate the mechanism for the increased incidence of male thyroid follicular tumors that was observed in the chronic rat study. These studies suggest that the tumors may have been caused by increased thyroid stimulating hormone (TSH) levels, which, in turn, resulted from clofentezine's liver toxicity.

6. *Animal metabolism.* The metabolism, tissue distribution and excretion of clofentezine have been evaluated in a number of species. In all species, almost all of the administered dose was recovered within 24 to 48 hours after treatment, primarily via the feces. The major route of metabolism

was found to be ring hydroxylation, sometimes preceded by the replacement of a chlorine atom with a methyl-thio group. Blood and tissue levels in the fetuses of pregnant rats that had been treated with clofentezine were much lower than the levels found in the mother, indicating that clofentezine does not readily pass across the placenta. In addition, less than 1% of the administered dose was absorbed through the skin of rats following a 10-hour exposure to a 50 SC (50% suspension concentrate) formulation of clofentezine.

Following oral dosing of a cow and three goats with 14C-labeled clofentezine, the residue in milk was identified as a single metabolite, 4-hydroxyclofentezine. Similarly, 4-hydroxyclofentezine has been shown to be the only metabolite present in fat, liver, and kidney. No unchanged clofentezine or other metabolites were found. Therefore, the nature of the residue in animals is adequately understood. The residues of concern are the combined residues of the parent, clofentezine, and the 4-hydroxyclofentezine metabolite.

7. *Endocrine disruption.* Except for the thyroid mechanistic studies mentioned above, no special studies have been conducted to investigate the potential of clofentezine to induce estogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. However, with the exception of a slightly increased incidence of thyroid tumors in male rats, no such effects were noted in any of the studies with clofentezine. The male rat is known to be much more susceptible than humans to the carcinogenic effects resulting from thyroid hormone imbalance and/or increased levels of TSH. Therefore, the alterations in thyroid hormone and subsequent thyroid pathological changes, which have been noted following administration of high doses of clofentezine, are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of clofentezine to which humans are likely to be exposed.

C. Aggregate Exposure

1. *Dietary exposure.* Clofentezine is a miticide used on apples, pears, almonds, walnuts, apricots, cherries, peaches, and nectarines. Clofentezine has also been registered recently for use on ornamental plants, however, the product (OVATION (miticide/insecticide) is not being marketed at this time. There are no other non-crop uses. Thus, potential sources of non-occupational exposure to clofentezine would consist only of any potential residues in food and drinking water. There are no acute toxicity concerns with clofentezine. Therefore, only chronic exposures are addressed here.

i. *Food.* A worst case dietary exposure assessment was performed for clofentezine using the dietary exposure evaluation model (DEEM) software (Novigen Sciences, Inc.) and 1994–1996 United States Department of Agriculture (USDA) consumption data. This assessment assumed that 100% of all grapes, apples, pears, almonds, walnuts, apricots, cherries, nectarines, peaches, milk, and the fat, meat, and meat by-products of cattle, goats, horses, sheep, and hogs contained residues at the established and proposed tolerance levels. A more realistic assessment was also conducted using estimates of market share.

ii. *Drinking water.* All EPA environmental fate data requirements have been satisfied. The potential for clofentezine to leach into ground water was assessed in terrestrial field dissipation studies conducted in several locations and in varying soil types. Half-lives ranged from 32.4 to 83 days. No evidence of leaching of parent or degradation products was observed. Based upon these and other studies, EPA concluded that ''clofentezine is a relatively short-lived, non-mobile compound which does not pose a risk to ground water, and will not be expected to accumulate in rotational crops.'' Thus, the potential for finding significant clofentezine residues in drinking water is minimal and the contribution of any such residues to the total dietary intake of clofentezine will be negligible. No maximum contaminant level for clofentezine has been established.

Sufficient ground or surface water monitoring data are not available to perform a quantitative risk assessment for clofentezine at this time. However, EPA previously determined estimated drinking water environmental concentrations (DWECs) in ground and surface water using available environmental fate data and the screening model for ground water (SCI–GROW) and the generic expected environmental concentration (GENEEC) model for surface water. The DWEC of clofentezine in ground water was estimated to be 0.04 parts per billion (ppb) using SCI–GROW, and the DWECs for surface water were estimated to be 6.5 ppb (acute DWEC) and 0.3 ppb (chronic DWEC) using GENEEC. EPA policy allows the 90/56-day GENECC value to be divided by 3 to obtain a value for chronic risk assessment calculations. Therefore, a surface water estimate of 0.1 ppb was used in the chronic risk assessment.

iii. *Chronic exposure.* EPA uses the drinking water level of comparison (DWLOC) as a theoretical upper limit on a pesticide's concentration in drinking water when considering total aggregate exposure to a pesticide in food, drinking water, and through residential uses. DWLOCs are not regulatory standards for drinking water; however, EPA uses DWLOCs in the risk assessment process as a surrogate measure of potential exposure from drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. Calculated DWLOCs for chronic risks are listed in the following Table 1.

TABLE 1.—SUMMARY OF DWLOC CALCULATIONS-CHRONIC (NON-CANCER SCENARIO)

Population subgroup [1]	Chronic (non-cancer) scenario					
	RfD mg/kg/day	Food exposure mg/kg/day	Maximum water exposure mg/kg/day [2]	SCI–GROW (ppb) [3]	GENEEC (ppb)	DWLOC (ppb)
U.S. population [1]	0.013	0.000346	0.01265	0.04	0.1	442
Northeast region [1]	0.013	0.000380	0.01262	0.04	0.1	441
Non-hispanic other than black or white [1]	0.013	0.000386	0.01261	0.04	0.1	441
Non-nursing infants [2]	0.013	0.001295	0.01171	0.04	0.1	117

TABLE 1.—SUMMARY OF DWLOC CALCULATIONS-CHRONIC (NON-CANCER SCENARIO)—Continued

Population subgroup [1]	Chronic (non-cancer) scenario					
	RfD mg/kg/day	Food exposure mg/kg/day	Maximum water exposure mg/kg/day [2]	SCI–GROW (ppb) [3]	GENEEC (ppb)	DWLOC (ppb)
Children (1–6 yrs) [3]	0.013	0.001333	0.01167	0.04	0.1	233
All infants (<1 yr) [2]	0.013	0.001114	0.01189	0.04	0.1	117

[1] Assume 70 kg bodyweight.
[2] Assume 10 kg bodyweight.
[3] Assume 20 kg bodyweight.

To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to clofentezine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

The estimated average concentration of clofentezine in surface water is 0.1 ppb. This value is less than EPA's DWLOCs for clofentezine as a contribution to chronic aggregate exposures (454 ppb). Therefore, taking into account the present uses and the proposed new use, residues of clofentezine in drinking water (when considered along with other sources of exposure for which reliable data are available) will not result in unacceptable levels of aggregate human health risk.

D. Cumulative Effects

The primary effects observed in the toxicity studies conducted with clofentezine appear to be a result of its potency as an enzyme inducer. Although many other chemicals are also known to induce microsomal enzymes, insufficient information is available at this time to determine whether or not the potential toxic effects from these chemicals are cumulative. Furthermore, realistic estimates of potential non-occupational exposure to clofentezine indicate that such exposures are minimal and far below the levels that might be expected to produce any effects. Thus, any contribution of clofentezine to cumulative risk will not be significant. Therefore, only exposure from clofentezine is being addressed at this time.

E. Safety Determination

1. *U.S. population.* The toxicity and residue data bases for clofentezine are considered to be valid, reliable, and essentially complete. Although clofentezine has been classified by EPA as category C for oncogenicity, quantitative oncogenic risk assessment was considered inappropriate for the following reasons:

a. Evidence of tumors was limited to a single site in one sex of one species and occurred only at the high-dose level.

b. The increased incidence of thyroid follicular tumors was only marginally increased above both concurrent and historical control levels.

c. No evidence of genotoxicity has been observed.

d. Mechanistic data indicate that the thyroid tumors were likely a secondary, threshold-medicated effect associated with clofentezine's liver toxicity. Furthermore, humans are believed to be much less susceptible to this effect than rats. Therefore, no effect on the thyroid pituitary axis or oncogeni response would be expected at exposure levels which did not affect the liver.

e. Clofentexine was recommended as a category D by EPA's scientific advisory panel (SAP) in 1988. Thus, a standard margin of safety approach is considered appropriate to assess the potential for clofentezine to produce both oncogenic and non-oncogenic effects. Based on the previously described data, EPA has adopted an RfD value for clofentezine of 0.0125 mg/kg/day, which was calculate using the NOAEL of 1.25 mg/kg/day from the 1-year dog feeding study and a 100-fold safety factor.

Using the worst-case assumptions of 100% of crop treated and that all crops and animal commodities contain residues of clofentezine at the current tolerance levels, the aggregate exposure of the general population to clofentezine from the established and proposed tolerances utilizes about 9% of the RfD. Using more realistic estimates of percent crop treated, this decreases to less than 3% of the RfD. There is generally no concern for exposures which utilize less than 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime would not pose significant risks to human health. Therefore, there is a reasonable certainty that no harm will result to the general population from aggregate exposure to clofentezine residues.

2. *Infants and children.* Data from rat and rabbit developmental toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide.

No indication of increased sensitivity to infants and children was noted in any of the studies with clofentezine. No developmental effects were noted in rats, even at a dose level (3,200 mg/kg/day) that exceeded the 1,000 mg/kg/day limit dose and produced maternal toxicity. In addition, no evidence of reproductive toxicity was noted in the rat multigeneration reproduction study. Slight developmental toxicity (decreased fetal weights) was noted in rabbits, but only at a dose level (3,000 mg/kg/day) that exceeded the EPA limit dose and also produced maternal toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children to account for prenatal and postnatal toxicity and the completeness of the data base. The toxicology data base for clofentezine regarding potential prenatal and postnatal effects in children is complete according to existing Agency data requirements and does not indicate any developmental or reproductive concerns. Furthermore, the existing RfD is based on a NOAEL of 1.25 mg/kg/day (from the 1-year dog study) which is already more than 800-fold lower than the NOAEL in the rabbit developmental toxicity study. Thus, the existing RfD of 0.0125 mg/kg/day is considered to be appropriate for assessing potential risks

to infants and children and an additional uncertainty factor is not warranted.

Using the conservative exposure assumptions described above (proposed and current tolerances, 100% crop treated, and no adjustments for percent contribution from livestock diet), aggregate exposure to residues of clofentezine are expected to utilize about 48% of the RfD in non-nursing infants, 20% of the RfD in nursing infants, and 36% of the RfD in children aged 1 to 6 years old. Using more realistic estimates of percent crop treated, the percent of RfD utilized is less than or equal to 10% for these population subgroups. These numbers would be lowered further if anticipated residues and/or an adjustment for percent contribution from livestock diet were utilized rather than tolerance values. Therefore, there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to clofentezine residues.

F. International Tolerances

Codex tolerances have been established for clofentezine on a wide variety of crops, including apples. The following maximum residue levels (MRLs) were adopted by the Codex Committee on Pesticide Residues (CCPR) in April 1988, except as noted in parentheses:

Commodity	MRL (mg/kg)
Cattle meat	0.05
Cattle, edible offal	0.1
Cattle, milk	0.01
Citrus fruits	0.5 (1995)
Cucumber	1.0 (1991)
Currants	0.01 (1993)
Eggs (poultry)	0.05
Grapes	1.0 (1995)
Pome fruits	0.5
Poultry, edible offal	0.05
Poutry meat	0.05
Stone fruits	0.2
Strawberry	2.0

This value, 1.25 mg/kg/day, was calculated by EPA using their standard conversion factor for food consumption. The NOAEL based upon actual food consumption in the study is 1.7 mg/kg/day.

[FR Doc. 00–17356 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6734–2]

Notice of Availability for Draft Guidance on the Use of Emissions Reductions From Motor Vehicles Operated on Low-Sulfur Gasoline as New Source Review (NSR) Offsets for Tier 2/Gasoline Sulfur Refinery Projects in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is making available for public review and comment a preliminary draft of its pending guidance on the use of emissions reductions resulting from motor vehicles operated on low sulfur gasoline as NSR offsets for Tier 2/Gasoline Sulfur Refinery Projects in nonattainment areas.

On February 10, 2000, EPA issued new emissions standards (''Tier 2 standards'') for all passenger vehicles, including sport utility vehicles, minivans, vans and pick-up trucks. To ensure the effectiveness of low emissions control technologies in these vehicles, this rule also sets new standards to significantly reduce the sulfur content in gasoline. In order to meet these sulfur-in-gasoline requirements, many refiners will have to make modifications to their existing facilities, which could be subject to the major permitting requirements under parts C and D of the Clean Air Act. For a refinery located in an area designated nonattainment, the acquisition of emissions offsets is one of the prerequisites for receiving the construction permit authorizing the major modification. To provide greater certainty and to expedite the NSR permitting process for refinery projects undertaken in nonattainment areas to comply with the new gasoline sulfur requirements, EPA intends to provide guidance to explain how States can use some of the motor vehicle emissions reductions resulting from use of low sulfur gasoline as NSR offsets.

A draft of EPA's guidance is available for public review and comment. The EPA does not intend to respond to individual comments, but rather to consider the comments from the public in the preparation of the final guidance.

DATES: The comment period on the draft guidance will close on August 11, 2000.

ADDRESSES: Written comments should be sent to Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–0641, telefax 919–541–5509 or E-mail *smith.pam@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Dan deRoeck, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–5593, telefax 919–541–5509 or E-mail *deroeck.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: A copy of the draft guidance document may be obtained by calling or E-mailing Pamela J. Smith. The draft guidance may also be downloaded from the NSR Web Site *http://www.epa.gov/ttn/nsr* under the topic ''What's New on NSR.''

Dated: July 5, 2000.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–17615 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00576A; FRL–6589–6]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document entitled ''Available EPA Information on Assessing Exposure to Pesticides in Food—A User's Guide.'' This notice is the nineteenth in a series concerning science policy documents related to the Food Quality Protection Act of 1996 and developed through the Tolerance Reassessment Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 308–2857; fax number: (703) 305–5147; e-mail address: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	032532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA Home Page at http://www.epa.gov. On the Home Page select ''Laws and Regulations'' and then look up the entry to this document under ''**Federal Register**—Environmental Documents.'' You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-Demand*. You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6061 for the document entitled ''Available EPA Information on Assessing Exposure to Pesticides in Food–A User's Guide.'' Select item 6062 for the document entitled ''Response to Comments for Available EPA Information on Assessing Exposure to Pesticides in Food–A User's Guide.'' You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00576A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background Information About the Tolerance Reassessment Advisory Committee

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met seven times as a full committee from May 27, 1998, through April 29, 1999.

The Agency worked with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC was the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believed were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA has been issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of the revised version of the science policy document identified in the ''SUMMARY.''

III. Summary of Revised Science Policy Guidance Document

The Agency's Office of Pesticide Programs regulates pesticides to ensure that their use does not pose unreasonable risks to human health or the environment and that pesticide residues in food are safe. These determinations rely on the process of risk assessment. In assessing risk, the Agency considers all routes of exposure (*e.g.*, food, drinking water, incidental exposure in and around the home and school) and the inherent toxicity of the pesticide.

The purpose of this ''User's Guide'' is to provide the reader with a comprehensive discussion and listing of EPA, USDA, and Food and Drug Administration (FDA) guidance, policy documents, and databases that provide detailed, specific ''how-to'' information and/or data on assessing exposure to pesticides from the foods that we eat. To put this exposure information in context, this guide first provides a basic overview of risk assessment for exposure resulting from pesticide residues in food.

This guide does not address aggregate exposure and risk assessment, which is the process of combining exposure to a single pesticide from all sources of exposure: food, drinking water, and non-occupational sources such as homes and recreational areas. And, this guide does not address cumulative risk assessment, which is the process of combining exposure and risk from all pesticides with a common mechanism of toxicity.

The first section of the guide, ''A Primer on Pesticide Exposure and Risk from Food,'' provides a very simple overview of EPA's approach to estimating risk and exposure from pesticide residues in food. The following section, ''Information Sources: Where to Find Guidance, Data, and Other Information on Assessing Exposure to Pesticides in Food,'' provides specifics on how to obtain or generate the data and/or information EPA uses in its assessments of exposure and risk from pesticides in food. Finally, a list of ''Where to Find's'' is provided along with the bibliography.

EPA published the draft science policy document on January 4, 1999 (64 FR 162) (FRL–6054–8) and comments were filed in docket control number OPP–00576. The public comment period ended on March 5, 1999. The Agency received comments from several organizations. All comments were considered by the Agency in the revised version of the science policy document.

Many of the comments were similar in content, and pertained to general issues concerning the proposed policy or specific sections within the draft science policy document. The Agency grouped the comments according to the nature of the comment and the issue or section of the document which they addressed. The Agency's response to the comments is available as described in Units I.B.1. and I.B.2.

IV. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

List of Subjects

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

Dated: June 21, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–17493 Filed 7–11–00; 8:45 am]

BILLING CODE 6560–50–F

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 July 26, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Enevoldsen Limited Partnership, Potter, Nebraska; to acquire voting shares of Enevoldsen Management Company, Potter, Nebraska, and thereby indirectly acquire voting shares of Potter State Bank of Potter, Potter, Nebraska.

Board of Governors of the Federal Reserve System, July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17563 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 August 4, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Rainsville Bancshares, Inc., Employee Stock Ownership Plan, Rainsville, Alabama; to become a bank holding company by acquiring 28.8 percent of the voting shares of First Rainsville Bancshares, Inc., Rainsville, Alabama, and thereby indirectly acquire voting shares of First Bank of the South, Rainsville, Alabama.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan, and Indiana Community Bancorp Limited, Elkhart, Indiana; to acquire 51 percent of the voting shares of Goshen Community Bank, Goshen, Indiana (in organization).

Board of Governors of the Federal Reserve System, July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17565 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1068]

Policy Statement on Payments System Risk Modifications to Daylight Overdraft Posting Rules; Delay of Effective Date; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement: Delay of effective date; Correction.

SUMMARY: The Board is announcing the delay of the implementation of changes to the procedures for measuring daylight overdrafts for Treasury Investment Program transactions as a result of the Treasury Investment Program's implementation delay. The Board is also announcing posting-time corrections for three transactions.

EFFECTIVE DATE: The effective date of amendments published at 65 FR 33734 and 33735 are delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Myriam Payne, Manager (202/452–3219), Stacy Coleman, Senior Financial Services Analyst (202/452–2934), or Donna DeCorleto, Project Leader (202/452–3956), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only:* Telecommunications Device for the Deaf, Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2000, the Board published modifications to the procedures for measuring daylight overdrafts for Treasury Investment Program (TIP) and Paper Tax System (PATAX) transactions (65 FR 33734). The TIP and PATAX applications were scheduled to replace the Treasury Tax and Loan (TT&L) system on July 10, 2000. On July 5, 2000, the Department of the Treasury announced the implementation delay of the TIP and PATAX applications (65 FR 41522). The Board will announce the revised effective dates of the modifications to the procedures for measuring daylight overdrafts once a new implementation date is established.[1]

Need for Correction

As published, the posting time for same-day Treasury withdrawals announced by 11:30 a.m. ET is incorrect and the posting times for Main Account Administrative Withdrawals and SDI (Special Direct Investment) Withdrawals were omitted.

Correction of Publication

Accordingly, the amendments published on May 24, 2000, at 65 FR 33735, which was subject of FR Doc. 00–13016, are corrected as follows:

Policy Statement on Payments System Risk [Corrected]

1. On page 33735, column 2, line 10 from the top of the column, the language ''+ Main Account Administrative Investment from TIP'' is corrected to read ''+/− Main Account Administrative Investment or Withdrawal from TIP.''

2. On page 33735, column 2, line 12 from the top of the column, the language ''+ SDI (Special Direct Investment) or Administrative Investment from TIP;'' is corrected to read ''+/− SDI (Special Direct Investment) or Administrative Investment or Withdrawal from TIP.''

3. On page 33735, column 2, line 24 from the top of the column, the language ''Post at 8:30 a.m., 11:30 a.m., and 6:30 p.m. Eastern Time:—Main Account Treasury Withdrawals from TIP'' is corrected to read ''Post at 8:30 a.m., 1:00 p.m., and 6:30 p.m. Eastern Time:—Main Account Treasury Withdrawals from TIP.''

[1] To allow sufficient time for depository institutions to adjust to the various operational changes associated with TIP, the Board approved a transition period in which most TIP transactions resulting in debits to depository institutions' accounts would post after the close of Fedwire. After this transition period, the Federal Reserve will post all TIP transactions resulting in debits to depository institutions' accounts on a flow basis as TIP processes them.

By order of the Board of Governors of the Federal Reserve System, July 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–17552 Filed 7–10–00; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 16, 2000

In accordance with § 71.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 16, 2000.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 6½ percent.

By order of the Federal Open Market Committee, June 30, 2000.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 00–17582 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–1076]

Privacy Act of 1974; Publication of Notice of Systems of Records and Amendment of Existing Systems of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; publication of four new systems of records and the amendment of one system of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is publishing notice of four new systems of records, entitled: ''Travel Records'' (BGFRS–8), ''Employee Relations Records'' (BGFRS–26), ''Performance Management Program Records'' (BGFRS–27), and ''Employee Assistance

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 16, 2000, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Program Records'' (BGFRS–28), as well as amendments to ''Disciplinary and Adverse Action Records'' (BGFRS–6). We invite public comment on this notice.

DATES: The new systems of records and amendments to the existing systems of records will become effective without further notice, on August 21, 2000, unless comments dictate otherwise.

ADDRESSES: Comments, which should refer to Docket No. R–1076, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. The mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), or Chris Fields, Manager, Human Resources Function, Management Division (202/452–3654), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of the Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at 202/452–4984.

SUPPLEMENTARY INFORMATION: The establishment of the new systems of records and amendments to one existing system of records results from a review of the Board's information practices conducted in accordance with the President's May 14, 1998, memorandum on privacy and information in federal records.

Unlike most Federal government agencies whose personnel files are maintained by the Office of Personnel Management (OPM), the Board maintains its own personnel-related files because the Board has independent statutory authority to hire staff and set the salary and benefit terms for its staff. Accordingly, the personnel-related files of Board employees are not contained in the government-wide systems of records published by OPM. Nevertheless, the Board's personnel-related files are used in much the same manner as those of other federal employees. Accordingly, after reviewing the routine uses for the existing system of records, the Board has determined to adopt many of the routine uses that are used in OPM's government-wide systems of records.

New Systems of Records

The Travel Records contain the information used by the Board's Finance Function to monitor official Board travel and make appropriate reimbursements. It also includes limited records related to the Government Travel Card, but most of the credit card records are maintained by the General Services Administration. Notice of these government-wide records appears in GSA/Govt-3, entitled ''Travel Charge Card Program.''

The system of records for Performance Management Program (PMP) reports contains the reports and any supporting or related documentation on the reports. While the system manager for these records is the Associate Director of the Human Resources Function of the Management Division, many of the records are maintained in the various divisions of the Board.

The Employee Relations records concern work-related issues that have been discussed with the employee relations specialists in the Human Resources Function of the Management Division.

The Employee Assistance Program (''EAP'') Records are maintained off Board premises in the office of the counselor who administers the EAP pursuant to a contract with the Board.

Revised System of Records

The revisions to the Disciplinary and Adverse Action Records update the descriptions of the records maintained and add several routine uses that are based on the routine uses used by OPM for the equivalent government-wide system of records. Furthermore, the retention period is revised to comply with the General Records Schedule.

In accordance with 5 U.S.C. 552a(r), a report of these actions is being filed with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget.

BGFRS–6

SYSTEM NAME:

FRB—Disciplinary and Adverse Action Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees (including special employees), and annuitants who are involved in a disciplinary or adverse action.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions and disciplinary actions. The records include, as appropriate, copies of the notice of proposed action, materials relied on by the Board to support the reasons in the notice, replies by the employee, statements of witnesses, hearing notices, record of hearings, reports, appeals and related documents, and Board decisions. This system may also contain records related to the Career Transition Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in administering its personnel functions, and to maintain a record of proceedings in a disciplinary or adverse action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a

license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

e. To disclose information 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 Board is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

h. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

i. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

j. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

l. To locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

n. To disclose information to the Department of Labor, Department of Veterans Administration, Social Security Administration, or any other Federal Agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (*e.g.*, State unemployment compensations agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Board or an agency, or to conduct an analytical study or audit of benefits being paid under such programs.

o. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board, when necessary to performance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards, magnetic tape and disk.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained for seven years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System, 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position. Individuals receiving notice of a proposed adverse action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record.

RECORD ACCESS PROCEDURES:

Individuals against whom disciplinary or adverse actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official file by contacting the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents that action of the Board, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if

known), approximate date of record, and type of position.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; Board officials; affidavits or statements from employees; testimonies of witnesses; official documents relating to an action, appeal, grievance, or complaints; and correspondence from specific organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–8

SYSTEM NAME:

Travel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. A commercial credit card contractor maintains information on employee use of the government travel credit card.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel Authorization forms and supporting documentation; Travel Expense Statements and supporting documentation; applications for the government travel card; periodic reports from the commercial credit card contractor regarding use of the government travel cards; records regarding Board reimbursement of travel expenses; and records regarding reservations for transportation and lodging made by the Board's Travel Desk.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

To provide a travel management process that covers official travel for the Board and provides for tracking and appropriate reimbursement of expenses incurred in such travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

b. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board, where necessary for performance.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose information 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 Board is a party to the judicial or administrative proceeding.

e. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

f. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

g. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

h. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) regarding the use of the government travel card.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in computer processable storage media.

RETRIEVABILILTY:

Records are indexed by name or trip number.

SAFEGUARDS:

Current and previous year's paper records are stored in the central lundia file system with access limited to those whose official duties require it. Records three years and older are stored in cardboard files in secured rooms. Access to computerized records is limited, through use of access codes, to those whose official duties require it.

RETENTION AND DISPOSAL:

Records are destroyed six years after reimbursement is made unless the claim is subject to litigation, in which case the records are destroyed when 10 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Finance Function, Management Division, Board of Governors of the Federal Reserve System, 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information provided by the employee, information from Travel Authorizations, reports from the credit card contractor, information from the Finance Function of the Management Division regarding reimbursement; and information from the Travel Desk regarding reservations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–26

SYSTEM NAME:

FRB—Employee Relations Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees (including special employees) with work-related issues that have involved the employee relations specialists in the Human Resources Function of the Management Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains written communications and related documents involved in adjusting work-related problems. Such documents may include copies of records included in other systems of records, including Performance Management Program (PMP) reports and related documentation; records of disciplinary actions; and records related to the Board's Drug-Free Workplace Plan. This system also includes records related to the Career Transition Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in administering its personnel functions, and to assist employees in resolving work-related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Board decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

b. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose information 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 Board is a party to the judicial or administrative proceeding.

e. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

f. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

g. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

h. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

j. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

l. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

m. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board, when necessary to the performance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable cabinets.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed three years after termination of counseling.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; the individual's managers, supervisors and officers; employees and officers in the Human Resources Function of the Management Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–27

SYSTEM NAME:

FRB—Performance Management Program Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. Final Performance Management Program (PMP) reports are maintained by the Human Resources Function of the Management Division. Supporting documentation for the reports is maintained in the Division where the employee works or worked.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed PMP reports, attachments, and supporting documentation; submissions and written suggestions by the subject employee; records of PMP objective-setting sessions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10(4) and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in administering its personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To consider and select employees for incentive awards, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

e. To disclose information 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 Board is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

h. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

i. To disclose information to the Merit Systems Protection Board in connection with appeals filed by preference-eligible employees.

j. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

l. To locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in lockable cabinets.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retain for 10 years from the year of the rating, then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System 20th & Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, and the individual's manager(s).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–28

SYSTEM NAME:

FRB-Employee Assistance Program Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. The files are under the control of the Board, but are maintained by an outside consultant pursuant to a contract with the Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, and their spouses and dependent children, who have consulted with, or been referred to, the Employee Assistance Counselor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files developed for each client seen by a counselor. These files may contain notes of each contact between the client and counselor, the counselor's assessment, the kind of services being provided (including referrals), and follow-up information on the outcome of the consultation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564 and 12 U.S.C. 244 and 248(l).

PURPOSE(S):

These records are collected and maintained to assist the Board in providing a safe and healthy working environment, and to comply with E.O. 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception of Routine Use ''f,'' none of the other Routine Uses are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the Board, generally only to the Medical Review Officer, the administrator of the Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

In other cases, the information in these records may be used:

a. To disclose information to a new employee assistance contractor following a contract transition for the services.

b. To provide the necessary information to family members, and to the appropriate law enforcement, security services, or child protective services, where there is a reason to suspect abuse or neglect of children or other vulnerable persons, where the individual using the EAP services poses a serious threat to the health or safety of another individual, or where the individual using EAP services presents a clear and present danger to the safety and security of the community or workplace.

c. To provide the information necessary to warn another individual whose health or safety has been seriously threatened by the individual using the EAP services.

d. To provide the necessary information to a family member or guardian, and/or appropriate law enforcement or health authority, where the individual using EAP services says or does something that seriously threatens his or her own health or safety.

e. To disclose the results of a drug test of a Board employee pursuant to an order of a court of competent jurisdiction where required by the U.S. Government to defend against any challenge against any adverse personnel action.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are kept in locked files.

RETRIEVABILITY:

Records are maintained by the name of the individual and the case number assigned to that individual.

SAFEGUARDS:

Only staff of the Employee Assistance Program have access to the files, which are maintained on the premises of the contractor hired to administer the program.

RETENTION AND DISPOSAL:

Records are maintained for three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Administrator, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above, but see the special procedures set forth in the Board's Rules Regarding Access to and Review of Personal Information Under the Privacy Act, 12 CFR 261a.7.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; the EAP counselor; an

employee's physical or mental health care provider or counselor; medical institutions; the contractor administering the Drug-Free Workplace Plan; Federal Reserve System personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, July 6, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17519 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Report of the ''Tar,'' Nicotine, and Carbon Monoxide of the Smoke of 1294 Varieties of Domestic Cigarettes for the Year 1998

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the ''Report of the 'Tar,' Nicotine, and Carbon Monoxide of the Smoke of 1294 Varieties of Domestic Cigarettes for the Year 1998.''

DATES: July 12, 2000.

ADDRESSES: Copies of the report are available from the FTC's World Wide Web site at: *http:www.ftc.gov* and from the FTC's Public Reference Branch, Room 130, 600 Pennsylvania Ave. NW., Washington, DC 20580. Telephone (202) 326–3128.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Staff Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Ave. NW., Washington, DC 20580. Telephone (202) 326–2699.

SUPPLEMENTARY INFORMATION: This report contains data on the ''tar,'' nicotine, and carbon monoxide yields of 1294 varieties of cigarettes manufactured and sold in the United States in 1998. The Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted the ''tar,'' nicotine, and carbon monoxide testing for the widely-available domestic cagarette varieties. TITL provided the results to the respective cigarette companies, which then provided the data generated by TITL regarding their own brands to the Commission in response to compulsory process. Cigarette smoke from generic, private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and the test results were provided to the FRC in response to compulsory process.

In response to concerns that have been raised regarding the accuracy and utility of the testing method currently used to determine the ''tar,'' nicotine, and carbon monoxide ratings of cigarettes, the Commission in 1998 requested the assistance of the Department of Health and Human Services in reviewing the scientific and public health questions surrounding the test method and, if appropriate, determining how the test method should be changed. In its two most recent reports to Congress pursuant to the Federal Cigarette Labeling and Advertising Act, the Commission has recommended that Congress consider giving authority over cigarette testing to one of the Federal government's science-based, public health agencies.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–17588 Filed 7–11–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement with the Association for American Indian Physicians

AGENCY: Office of the Secretary, Office of Minority Health, HHS.

ACTION: Notice of a Cooperative Agreement with the Association for American Indian Physicians.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the Association for American Indian Physicians (AAIP). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to assist AAIP in expanding and enhancing its activities relevant to education, health promotion, disease prevention, and family and youth violence prevention, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to AAIP. During the last 5 years, AAIP has successfully demonstrated the ability to work with health agencies on activities relevant to increasing the proportion of practicing Native American health professionals, and enhancing physician and community education on health promotion, disease prevention, and research opportunities. The AAIP is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- This Association has developed, expanded, and managed an infrastructure to coordinate and implement various medical intervention programs within local communities and physician groups that deal extensively with Indian health issues. The Association has also established several oversight committees that provide a foundation upon which to develop, promote, and manage health intervention, education, and training programs which are aimed at preventing and reducing unnecessary morbidity and mortality rates among American Indian and Alaska Native populations.

- It has established itself and its members as an organization with professionals who serve as leaders and experts in planning, developing, implementing, and evaluating health education, prevention, and promotion programs aimed at reducing excessive mortality and adverse health behaviors among American Indian and Alaska Native communities.

- It has developed databases and directories of health services, health care accessibility issues, and professional development initiatives that deal exclusively with American Indian and Alaska Native populations that are necessary for any intervention dealing with this minority population.

- It has assessed and evaluated the current education, research and disease prevention, and health promotion activities for its members, affiliated groups, and represented sub-populations.

• It has developed a national organization whose members are all predominantly minority health care professionals and providers with excellent professional performance records.

• It has developed a base of critical knowledge, skills, and abilities related to instruction in medical and health professions preparation. Through the collective efforts of its members, its affiliated community-based organizations, sponsored research, and sponsored health education and prevention programs, the AAIP has demonstrated (1) the ability to work with academic institutions and health agencies on mutual education, service, and research endeavors relating to the goal of disease prevention and health promotion for American Indian and Alaska Native populations; (2) the leadership necessary to attract minority health professionals into public health careers; and (3) the leadership needed to assist health care professionals work more effectively with American Indian and Alaska Native clients and communities.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: June 22, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–17527 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With the National Council of La Raza

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of a cooperative agreement with the National Council of La Raza.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the National Council of La Raza (NCLR). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to support the efforts of the NCLR in expanding and enhancing its activities relevant to education, service delivery, health prevention, health promotion, and health research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority

This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to NCLR. During the last 5 years, NCLR has successfully demonstrated the ability to work with official health agencies on mutual education, service, and research endeavors. The NCLR is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

• It has developed, expanded, and managed an infrastructure to coordinate and implement various health education programs within local communities and physician groups that deal extensively with Hispanic health issues. The NCLR has established a strong network of Hispanic providers, health advocates, and health educators that provide a foundation upon which to develop, promote, and manage health interventions, and client education programs aimed at preventing and reducing unnecessary morbidity and mortality rates among Hispanic populations.

• It has established itself and its members as organizations with professionals who serve as leaders and experts in planning, developing, implementing, and evaluating health education curricula and client-based health prevention programs aimed at reducing excessive mortality and adverse health behaviors among Hispanic populations.

• It has developed databases and directories of health education programs, health care accessibility issues, and professional development initiatives that deal exclusively with Hispanic populations that are necessary for any intervention dealing with Hispanic populations.

• It has assisted in the development of many of the current education, research, disease prevention, and health promotion activities for its members, affiliated groups, and represented subpopulations.

• It has developed national organizations whose members consist of Hispanic physicians, health care providers, researchers and advocates with excellent professional performance records. The NCLR has a broad range of membership that is comprised of mostly Hispanic health care providers.

• It has developed a base of critical knowledge, skills, and abilities related to serving Hispanic clients on a range of health and social problems. Through the collective efforts of its members, its affiliated community-based organizations, sponsored research and sponsored health education and prevention programs, it has demonstrated: (1) The ability to work with academic institutions and official health agencies on mutual education, services, and research endeavors relating to the goal of disease prevention and health promotion of Hispanic peoples; (2) the leadership needed to assist health care professionals work more effectively with Hispanic clients and communities; and (3) the leadership needed to effectively promote health professions careers to Hispanic students who would otherwise not consider such a career path.

This cooperative agreement will be continued for an additional 5-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that his cooperative

agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia H. Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: June 22, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–17529 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With the National Medical Association

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of a cooperative agreement with the National Medical Association.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the National Medical Association (NMA). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to (1) increase the association's support for and assistance in increasing the proportion of practicing minority health professionals within the U.S.; and (2) assist the association in expanding and enhancing its health prevention, promotion, and health services research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government and non-government agencies.

Authority

This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to NMA. During the last 5 years, NMA has successfully demonstrated the ability to work with health agencies on activities relevant to practicing minority health professionals and to the improvement of the health status of minorities and disadvantaged people. The NMA is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It has developed and expanded an infrastructure to coordinate and implement medical education programs within local communities and physician groups that deal extensively with African American health issues. The association has also established regional, state, and local divisions which provide a foundation upon which to develop, promote, and conduct professional medical programs for preventing and reducing unnecessary morbidity and mortality among African Americans, as well as other minority populations.
- It has established itself and its members as an association with professionals who serve as leaders and experts in public health campaigns aimed at improving health status of minority populations.
- It has developed an extensive knowledge-base of essential disease prevention, health promotion, and research evaluation strategies that are necessary for any health intervention dealing with these minority populations, with particular focus on African Americans.
- It has assessed the current education, research, disease prevention, and health promotion activities for its members, affiliated groups, and represented subpopulations.
- It has developed a national association whose members are all predominately minority health professionals and providers.
- It has developed a knowledge-base of critical knowledge, skills, and abilities related to instruction, training, and preparation of medical and health professionals. Through the collective efforts of its members, the association's committees, sponsored research, and sponsored health education and prevention programs, the NMA has demonstrated (1) the ability to work with academic institutions and health agencies on mutual education, service, and research endeavors relating to the goal of preventing disease and promoting health of minorities and disadvantaged people; (2) the leadership necessary to attract minority health professionals into public health careers; and (3) the leadership needed to effectively promote health professional careers as an option to minorities and disadvantaged people who would otherwise not consider such a career path.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: June 22, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–17528 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Women's Health; Notice of Public Meeting on the Safety of Dietary Supplements Containing Ephedrine Alkaloids

AGENCY: Office of Public Health and Science, Office of the Secretary, DHHS.

ACTION: Notice of Public Meeting on the Safety of Dietary Supplements Containing Ephedrine Alkaloids.

SUMMARY: The Department of Health and Human Services' Office of Women's Health (OWH), which is part of the United States Public Health Service (USPHS), is announcing a public meeting to discuss available information about the safety of dietary supplements containing ephedrine alkaloids. These products are promoted for uses such as weight loss, body building, and increased energy. This meeting will afford all interested persons an opportunity to provide focused information and comment in a manner that will assist the USPHS in understanding the use of dietary supplements containing ephedrine alkaloids. Possible regulatory actions are not the topics for this meeting.

DATES: The meeting will begin on Tuesday, August 8, 2000 and will last for 2 or 3 days, depending on the number of presenters, from 9:00 a.m. to 6:00 p.m. Registration will open at 8:00 a.m. Registration and written notices of participation should be submitted by close of business, August 1, 2000. Late registrations will be accepted contingent on space availability.

ADDRESSES: The public meeting will be held at the Department of Health and Human Services, Wilbur J. Cohen Building, Wilbur J. Cohen Auditorium, 330 Independence Avenue, SW., Washington, DC 20201. Meeting participants should enter on the Independence Avenue entrance. The Wilbur J. Cohen Building is one block east of the Metro station (Orange/Blue Lines) Federal Center SW.

Background information on this meeting is available on the OWH Internet site (The National Women's Health Information Center) *www.4woman.gov/owh/public.* The agenda will be available at the public meeting.

In the **Federal Register** of April 3, 2000 (65 FR 17510), the Food and Drug Administration (FDA) announced the establishment of a new public docket that made available new adverse event reports and related information concerning dietary supplements containing ephedrine alkaloids. Interested persons were given until May 18, 2000 to submit written comments on the April 3, 2000 **Federal Register** notice to FDA's docket (Docket No. 00N–1200). FDA later extended this comment period until July 3, 2000 (65 FR 32113, May 22, 2000). FDA intends to reopen the comment period until September 30, 2000 via publication of a **Federal Register** notice the week of July 3, 2000. The transcript, presentations and views expressed at the USPHS public meeting on the safety of dietary supplements containing ephedrine alkaloids will be submitted to the FDA docket. For more Information, refer to www.fda.gov.

FOR FURTHER INFORMATION CONTACT: To register for the public meeting, contact: www.4woman.gov/owh/public, or contact Ms. Darlene Gregory, Conference Manager, Conference Technologies International, a division of the MayaTech Corporation (MTC), 8737 Colesville Road, 7th Floor, Silver Spring, MD 20910–3921, via fax at (301) 587–1686

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services' Office on Women's Health (OWH), which is part of the USPHS, will convene this public meeting. As part of this meeting, the USPHS will describe the historical and current use of ephedra-containing compounds and adverse events. The USPHS invites representatives from consumer groups, industry, and the clinical research communities to register for the meeting and to make presentations on the use of dietary supplements containing ephedrine alkaloids, the links between the use of these supplements and adverse events, and how best to characterize those links. The USPHS will assemble a panel of government public health experts representing such disciplines as epidemiology, clinical pharmacology, and cardiovascular medicine, whose rule will be to seek clarification from presenters.

II. Scope of the Discussion

The scope of this meeting will be limited to the issues discussed in this document. Possible regulatory actions are not the topics for this meeting. In reference to the following questions, discussion will cover such areas as the traditional medical use of these products, the use of these products as dietary supplements labeled for weight loss and exercise enhancement, and the known physiologic and pharmacologic actions of these alkaloids, including their use in combination with other stimulants. The specific questions on which USPHS is seeking comment follow.

1. What positive and adverse physiologic actions would be expected of ephedra based on its known constituents? Does the available information show an association between the use of dietary supplements containing ephedrine alkaloids and adverse events (i.e., cardiovascular, central nervous system, psychotropic, etc.) when used as directed?

2. Are there any circumstances for which there are well-established indications for the use of dietary supplements containing ephedrine alkaloids? What does and duration of use are needed for those indications? What is the quality of any data to support such use?

3. How would you characterize the seriousness and/or severity of the risks of ephedrine alkaloids labeled for weight loss and exercise enhancement, taking into account issues such as user demographics (age, sex, race/ethnicity); amount consumed across the population; use with other natural or synthetic stimulants (*e.g.,* caffeine, synephrine, yohimbine); the added stress of exercise; and individual sensitivity to these types of products?

4. Are the outcomes associated with use of these products affected by

- Dosage;
- User characteristics (*e.g.,* age, predisposing health conditions) or behaviors (*e.g.,* combining use with other stimulants or other compounds);
- Duration of exposure; or
- Other means?

III. Registration and Requests for Oral Presentations and Abstracts

If you would like to attend the meeting, we request that you register in writing with Ms. Darlene Gregory, Conference Technologies International, a Division of the Maya Tech Corporation (MTC), 8737 Colesville Road, 7th Floor, Silver Spring, MD 20910–3921, by August 1, 2000, by providing your name, title, business affiliation, address, telephone, fax number, and e-mail address. To expedite processing, this registration information may be sent to Ms. Gregory by fax at (301) 587–1686, or via the internet at www.4woman.gov/owh/public.

If you need special accomodations due to a disability, please inform Ms. Gregory when you register.

Researches with basic science, clinical, or other data responsive to the questions described above for dietary supplements containing ephedrine alkaloids are invited to register and to submit an abstract for an oral presentation. Abstracts must fit completely in a box measuring 6.5 inches wide by 4 inches deep and must follow this structured format: a brief title; names, credentials, affiliations, and locations of all authors (standard abbreviations are acceptable); identification of source(s) of support for the research and presentation; and the Objective Design, Results, and Conclusion of the research or presentation. Presenters should specify whether the research has been peer

reviewed, and the format of the presentation (slide, overhead, powerpoint [specify version], or other).

Other individuals wishing to provide remarks at the meeting are invited to submit a brief summary of those remarks, to fit completely in a box measuring 6.5 inches wide by 4 inches deep.

Presentations and summaries should be responsive to one or more of the specific focus questions identified in this notice. Incomplete abstracts or summaries and those nonresponsive to any of the questions will be rejected. Submitters should indicate if special accommodations are needed for the presentation. Abstracts should be received by close of business August 1, 2000, by Ms. Darlene Gregory, Conference Manager, Conference Technologies International, a Division of the MayaTech Corporation (MTC), 8737 Colesville Road, 7th Floor, Silver Spring, MD 20910–3921, via fax at (301) 587 1686.

Depending upon the number of people who register to make presentations, we may have to limit the time allotted for each presentation. Time will be allotted according to the number of requests received, but will be at least 3 minutes followed by 2 minutes of discussion. Presenters will be notified of their time.

V. Transcripts

You may request a transcript of the meeting in writing from the Freedom of Information Office [HFI–35], Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page.

You may also examine the transcript of the meeting after August 25, 2000, at the Dockets Management Branch between 9:00 a.m. and 4:00 p.m., Monday through Friday, as well as on the FDA website at *http://www.fda.gov*

Dated: July 5, 2000.

Wanda K. Jones,

Deputy Assistant Secretary for Health (Women's Health).

[FR Doc. 00–17526 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the sixth meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 8 a.m. to 5 p.m. on August 4, 2000 at the National Institutes of Health, Building 31, C Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892. The meeting will be open to the public with attendance limited to space available.

The Committee will devote time to a discussion of topics presented at its June 5–7 meeting and plan a course of action for future projects. The Committee will also hear a report from a SACGT working group that will meet August 3 to develop a methodology for classifying genetic tests for review purposes. There will be a limited period of time provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/scagt.htm* Individuals who wish to provide public comments or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov.* The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892.

Dated: July 5, 2000.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 00–17533 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 10 a.m.–4:45 p.m., July 17, 2000; 9 a.m.–1 p.m., July 18, 2000.

Place: Room 705A, Hubert H. Hemphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: At this meeting, the Subcommittee on Populations will continue to assess the feasibility of using the International Classification of Impairments, Disabilities, and Handicaps (ICIDH) system to classify functional status on administrative health records, such as enrollment forms for health plans, records of medical encounters, and standardized attachments to such records. Panelists will explore issues related to the potential application of the ICIDH for such records and will discuss data collection and measurement efforts necessary to address the issues effectively. This is the third of several public meetings being planned by the Subcommittee to discuss the topic of the feasibility of recording functional status on administrative health records.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Susan G. Queen, Lead Staff Person for the NCVHS Subcommittee on Populations, Division of Information and Analysis, Office of the Administrator, Health Resources and Services Administration, Room 14–22, 5600 Fishers Lane, Rockville, Maryland, 20852, telephone (301) 443–1129; or Marjorie S. Greenberg, Executive Secretary, NVCHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where an agenda for the meeting will be posted when available.

Dated: July 5, 2000.

James Scanlon,

Director, Division of Date Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–17632 Filed 7–11–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National HIV Prevention Planned Meetings; Cancellation

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the Cancellation of Meetings.

This notice announces the cancellation of previously announced meetings.

Federal Register: July 5, 2000 (Volume 65, Number 129) Notices Page 41471

Name: National HIV Prevention Plan Meetings

Time and Date: 9 a.m.–12 p.m. (Noon)

Tuesday—July 18, 2000

Hotel Pennsylvania, 401 7th Avenue, New York, NY 10001, Phone: 212–736–5000.

Wednesday—July 26, 2000

Crowne Plaza-Houston, 2222 West Loop South, Houston, TX 77027, Phone: 713–961–7272.

Thursday—July 27, 2000

Congress Plaza Hotel, 520 South Michigan Avenue, Chicago, IL 60605, Phone: 312–427–3800.

Tuesday—August 1, 2000

The Argent Hotel, 50 Third Street, San Francisco, CA 94103, Phone: 415–974–6400.

Place: See above.

Contact Person for More Information: Lydia Ogden, National Center for HIV, STD, and TB Prevention, Office of Planning and Policy Coordination, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8031. The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2000.

Julia Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17572 Filed 7–11–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 2:30 p.m.–3 p.m., July 26, 2000.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1004A&B, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Open: 2:30 p.m.–2:40 p.m., July 26, 2000. Closed: 2:40 p.m.–3:00 p.m., July 26, 2000.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters to be Discussed: Agenda items include the purpose of the meeting and discussion and vote on findings and recommendations from a June 26–27, 2000, site visit to assess the National Study of Costs and Outcomes of Trauma at Johns Hopkins University.

Beginning at 2:40 p.m., through 3 p.m., July 26, the Committee will meet to discuss and vote on findings and recommendations from a site visit to assess a national trauma study project. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: J. Howard Hill, Director, Office of Research Grants, serving as the designated Federal official, IRGRC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–4826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2000.

Julia Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17573 Filed 7–11–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1879]

BetzDearborn; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 9B4671) proposing that the food additive regulations be amended to provide for the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215),Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 22, 1999 (64 FR 33306), FDA announced that a food additive petition (FAP 9B4671) had been filed by BetzDearborn, 4636 Somerton Rd., Trevose, PA 19053. The petition proposed to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) to provide for the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard. BetzDearborn has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 23, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17603 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F–0157]

Minnesota Mining and Manufacturing Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0B4206) proposing that the food additive regulations be amended to provide for the safe use of a perfluoroalkyl acrylate copolymer, produced by the copolymerization of ethanaminium, *N*,*N*,*N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[(heptadecafluorooctyl) sulfonyl]methylamino] ethyl ester, as a component of paper and paperboard in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3085.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 22, 1990 (55 FR 21102), FDA announced that a food additive petition (FAP 0B4206) had been filed by Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144–1000. The petition proposed to amend the food additive regulations to provide for the safe use of perfluoroalkyl acrylate copolymer, produced by the copolymerization of ethanaminium, *N*,*N*,*N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[heptadecafluorooctyl) sulfonyl] methylamino] ethyl ester, as a component of paper and paperboard in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging. Minnesota Mining and Manufacturing Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 22, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17602 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F–0116]

Minnesota Mining and Manufacturing Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0B4197) proposing that the food additive regulations be amended to permit the additional use of ammonium bis (*N*-ethyl-2 perfluoroalkylsulfonamido ethyl) phosphates in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3085.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 16, 1990 (55 FR 14133), FDA announced that a food additive petition (FAP 0B4197) had been filed by Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144–1000. The petition proposed to amend the food additive regulations to permit the additional use of ammonium bis (*N*-ethyl-2 perfluoroalkylsulfonamido ethyl) phosphates in contact with nonalcoholic foods at high temperatures, including the use in microwave heat susceptor packaging. Minnesota Mining and Manufacturing Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 22, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–17604 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–64]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Indirect Medical Education (IME) and Supporting Regulations in 42 CFR 412.105;

Form No.: HCFA–R–64 (OMB# 0938–0456);

Use: This collection of information on interns and residents (IR) is needed to properly calculate Medicare program payments to hospitals that incur indirect costs for medical education. The agency's Intern and Resident Information System uses the information for producing automated reports of duplicate full-time equivalent IRs for IME. The reports provide contractors with information to ensure that hospitals are properly reimbursed for IME, and help eliminate duplicate reporting of IR counts which inflate payments. The collection of this information affects 1,350 hospitals which participate in approved medical education programs;

Frequency: Annually;

Affected Public: Not-for-profit institutions, and business or other for-profit;

Number of Respondents: 1,350;

Total Annual Responses: 1,350;

Total Annual Hours: 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 3, 2000.

John P. Burke III

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17545 Filed 7–11–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0315]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Collection of Data on Physician Encounters from Medicare + Choice Organizations; *HCFA Form Number:* HCFA–R–0315 (OMB 0938–NEW); *Use:* HCFA requires physician encounter data from Medicare + Choice organizations to develop and implement a risk adjustment payment methodology as required by the Balanced Budget Act of 1997; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 300; *Total Annual Responses:* 75.6 million; *Total Annual Hours:* 938,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17544 Filed 7–11–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

White House Initiative on Asian Americans and Pacific Islanders President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to conduct a public meeting during the month July 2000.

Name: President's Advisory Commission on Asian Americans and Pacific Islanders (AAPIs).

Date and Time: July 24, 2000; 9:00 a.m.–7:00 p.m. PDT and July 25, 2000; 9:00 a.m.–1:00 p.m. PDT.

Place: Los Angeles County Hall of Administration, 822 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, CA 90012.

The President's Advisory Commission on AAPIs will conduct a public meeting on July 24, from 9:00 a.m. to 7:00 p.m. PDT inclusive, and subsequent meeting on July 25, from 9:00 a.m. to 2:00 p.m. PDT inclusive. The meeting is open to the public.

Agenda items will include, but are not limited to: testimony from community organizations and individuals; approval of June conference call minutes; reports and recommendations from Commissioners and subcommittees; administrative tasks; and upcoming events.

The purpose of the Commission is to advise the President on the issues facing Asian Americans and Pacific Islanders (AAPIs). The President's Advisory Commission on AAPIs will be seated through June 7, 2001.

Requests to address the Commission on July 24 must be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to: (301) 443–0259.

Anyone who has interest in joining any portion of the meeting or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD, 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation, foreign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than July 14, 2000.

Dated: July 6, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–17525 Filed 7–11–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Pretesting of Office of Cancer Communications Messages

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and

approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 9, 2000, pages 12560–12561 and allowed 60-days for public comment. No public comments were received. The purpose 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: Pretesting of Office of Cancer Communications Mesages. *Type of Information Collection Request:* Extension (OMB# 0925–0046, expires 8/31/00). *Need and Use of Information Collection:* In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g.*, cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the Office of Cancer Communications (OCC) needs to pretests its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OCC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OCC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs and behaviors—and use this information in the development of effective communication tools; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Businesses or other for profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government: *Type of Respondents:* Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows: *Estimated Number of Respondents:* 13,780; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .1458; and *Estimated Total Annual Burden Hours Requested:* 2,010. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

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, DC 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 Ellen Eisner, Communications Research Manager, Health Promotion Branch, OCC, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll free number (301) 435–7783 or E-mail your request, including your address to: EisnerE@occ.nci.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: June 29, 2000.

Reesa Nichols,

OMB Project Liaison Officer.

[FR Doc. 00–17534 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: July 16–18, 2000.

Time: 7:30 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Deborah R. Jaffe, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496–7721.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17535 Filed 7–11–00; 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 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 7, 2000.

Time: 8:30 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: SpectruMedix Corporation, 2124 Old Gatesburg Road, State College, PA 16803.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 3, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17537 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 25, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ns120v@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institues of Health, HHS)

Dated: June 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17536 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Clinical Trials Network.

Date: July 17, 2000.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Drug Abuse, Office of Extramural Affairs, 6001 Executive Blvd., Rm. 3158, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Grace, PhD., Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17538 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Phase II SBIR: ''Prevention Activities Handbook: A Practitioner's Guide to Selecting and Implementing Interactive Drug Use Prevention Activities for Children and Adolescents''.

Date: July 18, 2000.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd.,

Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is begin published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Clinical Trial Network Administrative Coordinating Center''.

Date: July 25, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17539 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 7, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 21, 2000.

Time: 2:30 am to 4:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787. etaylor@niaaa.nih.gov

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 2, 2000.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Ronald Suddendorf, PhD, Scientific Review Adminstrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 23–25, 2000.

Time: 7:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC 20037.

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21k@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17540 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 14, 2000.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 20, 2000.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Asikiya Walcourt, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301/443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 1, 2000.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–17541 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Pressure Mediated Selective Delivery of Therapeutic Substances and Cannula

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: PCT Patent Application Serial Number PCT/US99/11277 (PHS Ref. E–196–98/2) entitled ''Pressure Mediated Selective Delivery of Therapeutic Substances and Cannula'' filed on May 21, 1999, to InTissue, Inc., having a place of business in Swarthmore, PA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 11, 2000, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: ps193c@nih.gov; Telephone: (301) 496–7056, ext. 268; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The patent application describes methods and devices for improved regional, organ, tissue, tissue-compartment, and celltype-specific delivery of therapeutic agents via infusion of those agents into body lumens under controlled pressure and volume conditions. Methods of varying pressure and flow rates for given body targets and depths are also disclosed along with methods of determining the proper protocol for a given target tissue. This application also includes designs for access cannulas, catheters, access ports, and other devices for controlled, targeted delivery of therapeutic agents, including drugs and gene therapy vectors. Local administration of drugs, gene therapy vectors, and other therapeutic agents in accordance with this invention can permit organ, tissue, tissue-compartment, and celltype-specific delivery, thereby maximizing administration to intended tissue targets using therapeutically effective dosages while simultaneously reducing the risk of systemic delivery and toxicity.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to pressure mediated selective delivery of therapeutic substances to the gastrointestinal (GI) and genitourinary (GU) organs.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–17532 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: ''Highly Elastic, Adjustable Helical Coil Stent''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 4040.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application 08/434,822 entitled, ''Highly Elastic, Adjustable Helical Coil Stent'' filed on May 4, 1995 and now U.S. Patent 6,027,516, which issued on February 22, 2000, to Vascular Architects, Inc. of Portola Valley, California. The patent rights in the invention have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to all intraluminal uses.

DATES: Only written comments and or license applications which are received by the National Institutes of Health on or before October 10, 2000 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Girish C. Barua, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 601 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7056, ext. 263; Facsimile (301) 402–0220; E-mail BaruaG@od.nih.gov.

SUPPLEMENTARY INFORMATION: The U.S. Patent 6,027,516 claims an adjustable helical coil stent which can be contracted or expanded away from a catheter. The invention relates to medical devices used to hold open blood vessel, heart valves and other conduits of the human body. The helical coil can be contracted around a small diameter catheter for percultaneous

insertion into the human body and then be remotely expanded to its original shape. The devise is especially useful for total and partial heart bypass procedures.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 30, 2000.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–17531 Filed 7–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–44]

Notice of Submission of Proposed Information Collection to OMB; Youthbuild Program

AGENCY: Office of the Chief Information Officer, 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: *Comments Due Date:* August 11, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0142) 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: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; 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 Mr. Eddins.

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 name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Approval Number: 2506–0142.

Form Numbers: HUD–40200, 40201, 40202, 40203, 27054 and SF–1199A.

Description of the Need for the Information and Its Proposed Use: The Youthbuild Program was authorized under Section 164 of the Housing and Community Development Act of 1992 (42 USC 8011). Funded programs provide disadvantaged youth, predominantly high school drop outs, with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Semi-Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
	250		1.2		37		9,250

Total Estimated Burden Hours: 9,250.

Status: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 5, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–17521 Filed 7–11–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

Multi-Species Conservation Program (MSCP) for the Lower Colorado River, Arizona, California, and Nevada

AGENCIES: Bureau of Reclamation, Interior; Fish and Wildlife Service, Interior.

ACTION: Supplemental Notice of Intent to prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) and notice of supplemental public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (Service), and the Metropolitan Water District of Southern California (Metropolitan), intend to prepare an EIS/EIR to evaluate the impacts associated with implementing the MSCP for the Lower Colorado River (LCR) in the states of Arizona, California, and Nevada.

DATES AND ADDRESSES: Written comments on conservation alternatives and issues to be addressed in the EIS/EIR are requested by August 11, 2000, and should be sent to Mr. Tom Shrader, Attention: LC–2011, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470, or faxed to Mr. Shrader at (702) 293–8146. Oral and written comments will be accepted at the public scoping meetings to be held at the following locations:

July 31, 2000, 6–8 p.m., Yuma Desalting Plant, Bureau of Reclamation, 7301 Calle Agua Salada, Yuma, Arizona.

August 1, 2000, 6–8 p.m., California Department of Fish and Game, 14700 S. Broadway, Blythe, California.

August 2, 6–8 p.m., Regional Government Center, 101 Civic Way, Laughlin, Nevada.

August 3, 2000, 6–8 p.m., Henderson Convention Center, 200 South Water Street, Henderson, Nevada.

Starting at 6:30 p.m. at each of the public scoping meetings listed above, the lead agencies will present an overview of MSCP alternatives currently being considered and issues that will be addressed in the EIS/EIR. There will be an opportunity for individuals to make formal statements following each presentation.

FOR FURTHER INFORMATION, CONTACT: Mr. Tom Shrader, Ecologist, Bureau of Reclamation at (702) 293–8703 or Mr. Sam Spiller, Lower Colorado River Coordinator, Fish and Wildlife Service at (602) 640–2720, ext. 208. Questions regarding the CEQA process should be directed to Ms. Laura Simonek, Metropolitan Water District of Southern California at (213) 217–6242. Information on the purpose, membership, meeting schedules and documents associated with the MSCP may be obtained on the Internet at *www.lcrmscp.org,* with a supplemental link to Reclamation's web page at www.lc.usbr.gov.

SUPPLEMENTARY INFORMATION: The initial notice of intent to prepare an EIS/EIR and notice of public scoping meetings were published in the **Federal Register** of May 18, 1999 (Vol. 64, No. 95, pages 27000–2702). A summary of comments provided during the initial scoping period and at the public scoping meetings held at six locations from June 15 to July 1, 1999, is provided on the Internet at Reclamation's web site: *www.lc.usbr.gov.* Look for ''Scoping Summary Report'' under Multi-Species Conservation Program.

The proposed action is a multi-species conservation program that will (1) conserve habitat and work toward the recovery of threatened and endangered species as well as reduce the likelihood of additional species listings under the Federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA), (2) accommodate current water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with the law, and (3) provide the basis for take authorization pursuant to ESA and CESA.

Reclamation and the Service are joint Federal leads for the EIS. The EIS will be the basis for (1) Reclamation's Record of Decision on implementing its portion of the MSCP and (2) the Service's Record of Decision on issuing an ESA section 10 permit. In addition to the EIS/EIR document, Reclamation will also prepare a biological assessment on its ongoing and future discretionary actions on the LCR, and the Service will utilize the assessment in preparing a biological opinion pursuant to section 7 of the ESA. Metropolitan is the designated CEQA lead agency for the EIR.

The Lower Colorado River MSCP is a partnership of state, Federal, tribal, and other public and private stakeholders with interest in managing the water and related resources of the Lower Colorado River basin. In August of 1995, the Department of the Interior and the states of Arizona, Nevada, and California entered into a Memorandum of Agreement and later a Memorandum of Clarification (MOA/MOC) for Development of a Lower Colorado River Multi-Species Conservation Program.

It is proposed that the MSCP will serve as a coordinated, comprehensive conservation approach for the lower Colorado River basin within the 100-year floodplain from below Glen Canyon Dam to the Southerly International Boundary with Mexico for a period of 50 years. The participants agreed to develop, implement, and fund the MSCP. It was also agreed to pursue an ecosystem-based approach to developing the MSCP for interim and long-term compliance with applicable endangered species and environmental laws and to implement conservation and protection measures for included species and habitats.

Preliminary MSCP alternatives currently under consideration for the MSCP include: (1) No Action, (2) Large habitat core restoration areas with minimized management, (3) Smaller habitat core restoration areas with more active, long-term management, (4) Habitat preservation and enhancement, and (5) Species coverage limited to Federal threatened and endangered, and a number of sensitive, non-listed species. These preliminary MSCP alternatives are further defined below and additional details will be provided during the presentations at the four scheduled public scoping meetings listed above. The alternatives presentations at the public scoping meetings will start at 6:30 p.m., followed by an opportunity for individuals to make formal statements on the MSCP. The lead agencies will be seeking suggestions and comments regarding alternatives and issues and concerns that need to be addressed in the EIS/EIR.

Under the No Action/No Project alternative, it is assumed that some or all of the current and future projects proposed for coverage under the MSCP would be implemented. Under the No Action/No Project alternative, impacts from these potential projects on listed and sensitive species and habitats would be evaluated and mitigated on a project-by-project basis, as is presently the case. Individual ESA section 10 permits or section 7 consultations would be required for activities involving take of listed species.

The Large Core/Minimal Management alternative addresses about 100 species and includes riparian, marsh, and aquatic strategies for the conservation efforts. The main focus of this alternative uses a habitat-based approach with large core habitat creation (1,250 acres or greater), existing habitat for corridors, and restoration areas with minimal management. The aquatic strategy in this alternative creates offstream refugia and allows for periodic reconnection to the river system. Non-native control strategies are included. The approaches for delivering water to the core areas include engineered connections such as canals, weirs, and other devices. This alternative also includes the provision for up to 40,000 cubic-feet-per-second releases from upstream reservoirs in conjunction with bankline and levee modification to create habitat. A floodplain management strategy would also be developed under this alternative. Water may be acquired for habitat management or maintenance through a variety of means, for example, from willing sellers or a water bank. The range of alternative acreage strategies suggested by a variety of scientists and biologists includes 12,000–80,000 acres of habitat restoration/creation.

The Smaller Core/Active Management alternative addresses about 100 species and includes riparian, marsh, and aquatic strategies for the conservation efforts. The main focus of this alternative uses a habitat-based approach with small core habitat

creation (250 to 1,250 acres) in conjunction with habitat for corridors and restoration areas with an active management component. The aquatic strategy in this alternative creates offstream refugia without provision for periodic reconnection to the river system. Non-native control strategies are included. The approaches for delivering water to the core areas include engineered connections such as canals, weirs, and other devices. The range of alternative acreage strategies suggested by a variety of scientists and biologists includes 12,000–80,000 acres of habitat creation/restoration.

The Habitat Restoration and Enhancement alternative also addresses about 100 species and includes riparian, marsh, and aquatic strategies for the conservation efforts. The main focus of this alternative uses a habitat-based approach through preservation and creation of habitat anywhere within the species' breeding range within the United States and may take advantage, where appropriate, of cooperative activities with related/adjacent programs. The aquatic strategy in this alternative focuses on the establishment of self-sustaining populations in the Upper Salt River and other LCR tributaries through renovation of habitat, stocking of fish, and removal of non-native fish. Studies have indicated that approximately 58,000 acres of land throughout the breeding range of the southwestern willow flycatcher may be available for acquisition and subsequent preservation. This habitat conservation would need to be supplemented with other conservation for species residing only within the LCR.

The Smaller Number of Species alternative is a species-based approach that works toward recovery on an individual species basis. This alternative addresses a limited number of species, including ESA-listed species and those species that are most likely to be listed. Elements of large core and small core alternatives are incorporated to meet the recovery goals on a case-by-case basis. The aquatic strategy in this alternative creates off stream refugia and allows for periodic reconnection to the river system. Non-native control strategies are included. The approaches for delivering water to the core areas include engineered connections such as canals, weirs, and other devices. The range of alternative acreage strategies suggested by a variety of scientists and biologists includes 12,000–80,000 acres of habitat creation/restoration. However, the actual acreage required would depend on the suite of species covered under this alternative.

A public involvement program has been initiated and will be maintained throughout this EIS/EIR process. The goal is to keep the public and affected parties informed and actively involved as the project evolves. Given the number of entities participating (Federal, State, and local governments, Native Americans, and private interest groups), successfully providing information and soliciting feedback are critical to the project's effectiveness.

Probable Environmental Effects—Following is a preliminary list of probable environmental and economic issues and effects associated with the project. Other issues may be identified during the internal MSCP and public scoping process.

Biological Resources—Among the endangered species known to use the project area are the southwestern willow flycatcher, Yuma clapper rail, razorback sucker, bonytail, and bald eagle (being considered for delisting). Of prime concern will be the conservation of these and other species, such as the yellow-billed cuckoo (under review for listing under the ESA), and associated habitat within the 100-year floodplain. Implementation of the MSCP will have an overall benefit on biological resources by moving species toward recovery and reducing the likelihood of additional species listings.

Hydrology and Water Quality—Certain conservation strategies may alter onsite water resources, including waters of the United States [as defined in 40 CFR 230.3(s)], which are under the U.S. Army Corps of Engineers (Corps) jurisdiction. Under Section 404 of the Clean Water Act, the Corps is responsible for issuing a permit if a project may result in the placement of material into water of the United States. Until specific alternatives are developed, the effects on hydrology and water quality are unknown.

Floodplains and Wetlands—Implementation of the MSCP will have overall beneficial impacts on floodplains and wetlands, especially in maintaining or creating backwaters (wetlands) and reestablishing native riparian habitat which is essential to the recovery of species. The MSCP partnership has identified several thousand acres of flood plain sites that may have the potential for restoration and enhancement of native habitat. There are several opportunities for the MSCP partnership and Federal, state, Native American and private landowners to voluntarily develop and engage in long-term native habitat restoration. The conversion of developed crop lands to native habitat could be an important component of an MSCP alternative. The MSCP is also exploring the economic requirements associated with long-term leases or purchases of private holdings from willing lessors or sellers.

Cultural Resources—The program could disturb or affect archaeological resources, traditional cultural properties, Indian sacred sites, and Indian Trust Assets. However, it is the intent of the MSCP to avoid or mitigate such effects and the MSCP, as part of the EIS/EIR process, is currently evaluating the potential effects of the preliminary alternatives on such resources.

Socioeconomics—The potential socioeconomic impacts associated with implementation of the MSCP will be evaluated. This assessment may include municipal and industrial uses, agricultural productivity, and other socioeconomic considerations.

Recreation—During the initial scoping in 1999, numerous recreational concerns and issues were identified. In general they involved the potential effects of the MSCP on access to the flood plain and river; activities such as camping, fishing and hunting; boat size and type of motor; off road vehicle use; and implementing ESA and Executive Order 12962 regarding recreational fisheries.

Water and Hydroelectric Power Uses—The effect of various conservation measures on water and hydroelectric power uses will be evaluated. It is the intent of the MSCP to accommodate these uses while protecting covered species and their habitat within the project area.

Agricultural and Other Land Uses—Current agricultural resources or operations and land uses may be impacted. Land use and cropping patterns would change with the voluntary conversion of agricultural lands to native riparian habitat or the transfer of water rights for habitat maintenance and restoration.

International Impacts—Pursuant to council on environmental quality guidance regarding NEPA, potential trans-boundary impacts to Mexico resulting from implementation of the MSCP will be identified and analyzed. The project will not affect the delivery of water pursuant to the 1944 Mexico Water Treaty.

Environmental Justice—It is anticipated that the MSCP will not result in disproportionately high and adverse human health or environmental effects on minorities and/or low income populations.

Related Project Documentation—It is anticipated that the EIS/EIR process will make full use (including incorporation

by reference, as appropriate, pursuant to NEPA and CEQA) of the following project documents, copies of which are available for inspection at Metropolitan, Reclamation, and Service offices:

Bureau of Reclamation, Description and Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River—Final Biological Assessment, August 1996.

Fish and Wildlife Service, Biological and Conference Opinion on Lower Colorado River Operations and Maintenance—Lake Mead to Southerly International Boundary, April 1997.

These documents may also be accessed through Reclamation's web site at *www.lc.usbr.gov.* See ''Published Reports'' at Multi-Species Conservation Program.

The draft EIS/EIR is expected to be available for public review by the first half of 2001.

Dated: July 5, 2000.

Robert W. Johnson,

Regional Director, Lower Colorado Region, Bureau of Reclamation.

Dated: July 6, 2000.

Nancy M. Kaufman,

Regional Diector, Region Two, Fish and Wildlife Service.

[FR Doc. 00–17578 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–0943130–JH: GP0–272]

Temporary Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Public Lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation, parking, camping, shooting, hiking and sightseeing, from July 10, 2000 through November 15, 2000. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this temporary closure are specifically identified as follows:

Federal lands located in Section 29, Township 17 south, Range 4 West of the Willamette Meridian, Oregon, more generally described as follows: All federal lands within the City of Eugene Urban Growth Boundary located in Section 29, Township 17 South, Range 4 West of the Willamette Meridian lying east of Greenhill Road, South of Royal Ave., west of Terry Street and a line running South from the end of Terry Street to the Southern Pacific Railroad tracks, and north of the Southern Pacific Railroad tracks.

Containing approximately 200 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau, City of Eugene, and Corps of Engineers employees; state, local and federal law enforcement and fire protection personnel; agents for the Cone wetland mitigation sites; the contractor authorized to construct the Lower Amazon Wetland Restoration Project and its subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety, facilitate construction of the Lower Amazon Wetland Restoration Project facilities, and protection of property and equipment during the mobilization, construction and de-mobilization phases of the Lower Amazon Wetland Restoration construction project.

DATES: This closure is effective from July 10, 2000 through November 15, 2000.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Pat Johnston, Wetlands Project Manager, Eugene District Office, at (541) 683–6181.

Dated: July 6, 2000.

Diana Bus,

Coast Range Field Office Manager.

[FR Doc. 00–17575 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–920–00–1990–HP]

Abandoned Mined Lands Physical Safety Hazard Abatement; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Nevada State Office of the Bureau of Land Management gives notice of its intent to initiate a scoping period and conduct public meetings to identify issues and formulate alternatives for a programmatic Environmental Assessment (EA) for the abatement of safety hazards associated with Abandoned Mined Lands (AMLs) on Nevada public lands managed by the Bureau of Land Management.

DATES: Public comments on the preliminary issues and planning criteria will be accepted until August 11, 2000.

In addition, two informal public meetings are scheduled for Thursday, July 27, 2000, at the BLM Las Vegas Field Office, 4765 West Vegas Drive, Las Vegas, Nevada, and Tuesday, August 1, 2000, at the BLM Nevada State Office, 1340 Financial Boulevard, Reno, Nevada. Both meetings will begin at 7 p.m. each evening.

ADDRESSES: Written comments should be addressed to Christopher Ross, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Christopher Ross, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006.

SUPPLEMENTARY INFORMATION: The proposed EA will result in the development of alternatives for the selection and remediation of AML features on Nevada public lands which represent physical safety hazards to humans. The anticipated issues for this proposed EA include:

(1) Determination of criteria for the prioritization of selection of sites for hazard abatement.

(2) Determination of what stipulations or conditions are necessary for remediation activities to protect, maintain, and enhance other resources, including protection of critical wildlife habitat; protection of threatened and endangered plant and animal species; recreational, cultural, and archeological resources.

(3) Identification of alternatives for securing hazardous sites.

(4) Determination of what impacts to the minerals industry may result from the securing of hazardous AML sites. Preliminary planning criteria for the AML Environmental Assessment call for the following:

(A) Sites which include chemical or water quality issues will not be considered in this EA.

(B) Existing studies, the most current available inventories, and ongoing investigation will be used to determine potential sites for remediation consideration.

(C) Reasonable scenarios based on available data and technology will be developed for remediation alternatives.

(D) An interdisciplinary approach will be used to develop reasonable alternatives; analyze impacts, including cumulative impacts to natural and cultural resources and the physical, social, and economic environment; identify alternatives; and make determinations.

(E) Impacts of use on adjacent or nearby non-Federal lands and non-public land surface over Federally owned minerals will be considered.

(F) Impacts from energy and mineral development on public lands will be considered. Alternatives proposed for consideration at a minimum include:

(1) No action—defined as continuation of current management.

(2) Preferred Alternative—to be defined by BLM management following consultation with staff and input from the public. An interdisciplinary team representing the following disciplines will be assigned to this planning effort: Minerals, wildlife, lands, recreation, wilderness, cultural resources, and hydrology. All documentation will be reviewed by the interdisciplinary team.

Public participation is an integral part of the planning process. It begins with this scoping period and public meetings and will continue through the development of the EA. The next major opportunity for public review and comment will be offered with the publication of the preliminary EA; however, the public is invited to comment or to become involved at any time during the planning process.

Dated: July 6, 2000.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 00–17574 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1820–DH–014B]

Headwaters Forest Reserve, California; Environmental Impact Statement; Extension of scoping Comment Period

AGENCY: Bureau of Land Management in Partnership with California Department of Fish and Game.

ACTION: Extension of scoping comment period.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the adoption of a Management Plan for the Headwaters Forest Reserve in the northcoast area of California, and to announce three public scoping meetings, was published in the **Federal Register** June 2, 2000 (Volume 65, Number 107). A scoping comment deadline of July 3, 2000 was also cited and extended by subsequent **Federal Register** on June 23 to August 4, 2000 (Volume 65, Number 122). The scoping comment deadline is hereby extended to August 18, 2000 by this notice. This extension is intended to provide the public with additional time to prepare and submit comments.

SUPPLEMENTARY INFORMATION: An internet web page describes in detail the scope of the proposed plan and provides background information on the Headwaters Forest Reserve. The web page contains instructions for submitting scoping comments, and coding of comments by subject is requested. The internet address of the web site of *www.ca.blm.gov/arcata/headwaters.html.* The deadline for submitting comments is amended to Friday, August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Arcata Field Manager, at 707–825–2300 or Headwaters Forest Reserve Management Plan Information Line, 916–737–3010, extension 4326. Email comments should be sent to *headwatersplan@att.net,* or comment letters should be mailed to P.O. Box 189445, Sacramento, California 95818–9445.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 00–17576 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–5700–10; IDI–33300]

Classification of Lands for Recreation and Public Purposes, Elmore County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands in Elmore County, Idaho, have been examined and determined to be suitable for classification for lease or conveyance to Elmore County, under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

Boise Meridian, Idaho

T. 2 N., R. 1 E., section 19:
NE¼NE¼NE¼SW¼.
Aggregating 2.5 acres, more or less.

DATES: Interested parties may submit comments through August 28, 2000, to the Bruneau Field Manager.

ADDRESSES: Comments should be sent to Jenna Whitlock, Bruneau Field Manager, Bureau of Land Management, Lower Snake River District, 3948 Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Mike Austin, Bruneau Realty Specialist at (208) 384–3339.

SUPPLEMENTARY INFORMATION: Elmore County has filed application to lease and/or purchase the above described public lands under the authority of the R&PP Act. The proposed use of the land is for a community center and shed to house equipment necessary to maintain snowmobile trails for recreational use by the public. The lands will be developed and managed for community and recreational purposes, as described in the development plan submitted by Elmore County on January 15, 2000. We have determined that the lease or conveyance of the lands for the proposed community center and shed are in the public interest.

Publication of this notice in the **Federal Register** will segregate the above described public lands from the operation of the public land laws and the mining laws, except for mineral leasing and leasing or conveyance under the R&PP Act. In the absence of any adverse comments, the classification will become effective September 11, 2000. The segregative effect will automatically expire on January 14, 2002.

Comments: Comments may address whether the lands being classified are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning or zoning, or if the use is consistent with State and Federal programs. Comments may also address the specific use proposed in the application or plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease the land under the R&PP Act, or any other factor not directly related to the suitability of the land for the stated purpose. Adverse comments will be reviewed by the District Manager.

The lease of the lands will not occur until after the classification becomes effective, and will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Dated: July 6, 2000.

Jenna Whitlock,

Bruneau Field Manager.

[FR Doc. 00–17577 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of OMB Approval and Notice of Proposed Information Collection

AGENCY: National Park Service, Interior.

ACTION: Announcement of OMB approval and request for comments on proposed information collection.

SUMMARY: The National Park Service is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Final Rule on Concession Contracts.

Additionally, in compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to request approval for the collection of information for 36 CFR part 51, section 51.47 regarding the appeal of a preferred offeror determination, sections 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and Section 51.98 concerning recordkeeping requirements with which concessioners must comply.

DATES: Comments on the proposed information collection must be received by September 11, 2000.

ADDRESSES: Comments may be mailed to Wendelin M. Mann, Concession Program, National Park Service, 1849 C Street, NW., Washington, DC 20240. Comments may also be submitted electronically to *wendy_mann@nps.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, and explanatory information, contact Wendelin M. Mann at (202) 565–1219.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations as 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection activities that NPS will submit to OMB for approval. NPS has requested, and OMB has granted emergency approval for these information collection activities through October 31, 2000, under Control Number 1024–0231.

NPS has identified burden estimates based on its experience with concession contracts and on information previously supplied by concessioners or offerors in response to concession prospectuses. NPS will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany NPS's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

Title: Concession Contract-36 CFR 51.

OMB Control Number: 1024–0231.

Summary: The information is being collected to meet the requirements of sections 403(7) and (8) of the National Park Service Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract, section 405 of the Act regarding the construction of capital improvements by concessioners, and section 414 of the Act regarding recordkeeping requirements of concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations, agency review and approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects, and when necessary, agency review of a concessioner's books and records related to its activities under a concession contract.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: NPS concessioners, and, in the case of appeals of preferred offeror determinations, offerors in response to concession prospectuses.

Total Annual Responses: 758.

Total Annual Burden Hours: 3,276.

Dated: June 29, 2000.

Richard G. Cripe,

Manager, Washington Administrative Program Center.

[FR Doc. 00–17523 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that meetings of the Native American Graves Protection and Repatriation Review Committee will be held on December 11, 12, and 13, 2000, in Nashville, TN, and May 31, June 1 and 2, 2001, in Kelseyville, CA.

December 11, 12, and 13, 2000 Meeting

The Committee will meet at the Sheraton Music City Hotel; telephone: (615) 885–2200, fax: (615) 231–1134, located at 777 McGavock Pike at Century City, Nashville, TN.

The agenda for the December meeting will include Federal agency compliance reports.

A block of lodging rooms has been set aside at the Sheraton Music City Hotel at a significantly reduced rate. Reservations must be booked by November 10, 2000, to guarantee the reduced rate. Please reference the National Park Service and mention that you are attending the NAGPRA Review Committee Meeting.

Meetings will begin at 8:30 a.m. and will end no later than 5:00 p.m. each day. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis.

Persons wishing to make a presentation to the Committee should submit a request to do so by November 10, 2000. Please submit a written abstract of your presentation and your

contact information. Any member of the public also may file a written statement for consideration by the Committee by November 24, 2000. Both written requests and statements should be addressed to the Committee in care of the Assistant Director, Cultural Resources Stewardship and Partnerships.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships, 1849 C Street NW. 350 NC, Washington, DC 20240; telephone: (202) 343–3387; facsimile: (202) 343–5260. Transcripts of the meeting will be available for public inspection approximately eight weeks after the meeting at the office of the Assistant Director, Cultural Resources Stewardship and Partnerships, 800 North Capitol Street NW. Suite 350, Washington, DC 20013; email: John_Robbins@nps.gov .

May 31, June 1 and 2, 2001 Meeting

The Committee will meet at Konocti Harbor Resort and Spa; telephone: (707) 279–4281, fax: (707) 279–8575, located at 8727 Soda Bay Road, Kelseyville, CA. Additional information regarding specific agenda items and reservation details will be published at least 90 days prior to the meeting. The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act.

Dated: June 19, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–17524 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Allocation of Water Supply and Long-Term Contract Execution, Central Arizona Project

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of availability of a draft environmental impact statement for public review and comment on the proposed allocation of water supply and long-term contract execution, Central Arizona Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), has issued a Draft Environmental Impact Statement (DEIS) for the Central Arizona Project. This notice updates the **Federal Register** notice published on June 23, 2000 (65 FR 39177) and provides notice that the public comment period on this DEIS remains unchanged and notice that Reclamation will not be holding public hearings on this DEIS. Information on the public comment period may be found below in the **DATES** section. Information on public hearings may be found below in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Send written comments on the DEIS to Mr. Bruce Ellis, Environmental Program Manager, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069–1169, by August 25, 2000.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

The draft EIS document remains available for public inspection on the Internet at *http://www.apo.lc.usbr.gov.* In addition, copies of the draft EIS remain available at the following address: Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069–1169, faxogram 602–216–4006, or telephone 602–216–3812.

See the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notice dated June 23, 2000 (65 FR 39177) for a list of libraries where the draft EIS remains available for public inspection and review.

DATES: Written comments on this DEIS must be received no later than August 25, 2000.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Mr. Bruce Ellis, Environmental Program Manager, at Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069–1169, or telephone (602) 216–3812.

SUPPLEMENTARY INFORMATION: As noted above in the **DATES** section, the public comment period on this DEIS remains unchanged and written comments must be received no later than August 25, 2000. In addition, in the **Federal Register** notice dated June 23, 2000 (65 FR 39177) Reclamation indicated that public hearings would be held during the public comment period to receive written or verbal comments on the DEIS. Based on legislation recently passed by Congress, Reclamation will not be holding public hearings on this matter. Interested members of the public may still provide comments on the DEIS and Reclamation therefore encourages all interested entities to provide written comments to Reclamation during the public comment period.

Dated: July 7, 2000.

V. LeGrand Neilson,

Deputy Regional Director.

[FR Doc. 00–17637 Filed 7–11–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–718 (Review)]

Glycine From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 3, 2000 (65 FR 5371, February 3, 2000) and determined on May 5, 2000 that it would conduct an expedited review (65 FR 31145, May 16, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on June 30, 2000. The views of the Commission are

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

contained in USITC Publication 3315 (June 2000), entitled Glycine From China: Investigation No. 731–TA–718 (Review).

Issued: July 3, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17627 Filed 7–11–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–033]

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 14, 2000 at 10 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731-TA–527 (Review)(Extruded Rubber Thread from Malaysia)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 27, 2000.)
5. Inv. No. 731-TA–669 (Review)(Cased Pencils from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 24, 2000.)
6. Outstanding action jackets: (1.) Document No. (E)GC–00–004: Administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 6, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–17775 Filed 7–10–00; 2:18 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 28, 2000, a proposed Partial Consent Decree in *United States* v. *Michael P. Eason, et al.*, Civil Action Number 98–2859 G V, was lodged with the United States District Court for the Western District of Tennessee.

In this action the United States sought recovery of costs incurred by the United States Environmental Protection Agency, in connection with responding to the release and threatened release of hazardous substances at the Memphis Container Site (aka Tri-State Drum Site) (''the Site''), located at 1761 Warford Road, Memphis, Shelby County, Tennessee. The Partial Consent Decree resolves certain claims pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, against defendant Lucille Ryan. Under the proposed Partial Consent Decree, defendant Lucille Ryan will pay $55,000 to the United States for past response costs, plus an additional $20,000 more within two years from the proceeds of the sale of the site property as required by the Consent Decree. The proposed consent decree includes a covenant not to sue by the United Staates under section, 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the entire Site, including all past and future costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to the *United States* v. *Michael P. Eason, et al.*, D.J. Ref. 90–11–2–1352.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney, Western District of Tennessee, Suite 800, 167 North Main Street, Memphis, Tennessee 38103, or at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting copies please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per pages reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–17530 Filed 7–11–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

July 6, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), on or before August 11, 2000.

The OMB 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 submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Business or other for-profit; Not-for-profit; Farms, State, Local or Tribal Government.

Frequency: Annual.

Form	Total respondents	Total responses	Average hours per response	Estimated total burden hours
BLS 9300	230,000	230,000	.71	163,125
Prenotification package	150,000	230,000	.11	16,666
Totals				179,791

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data also are used to evaluate the effectiveness of the Federal and State programs and to prioritize resources.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–17605 Filed 7–11–00; 8:45 am]

BILLING CODE 4510–24–M

MARINE MAMMAL COMMISSION

Sunshine Act Notice

Time and Date: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in exeutive session on Tuesday, October 10, 2000, from 8:30 a.m. to 10 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, October 10, from 10:15 a.m. to 5:15 p.m., on Wednesday, October 11, from 8:30 a.m. to 5 p.m., and on Thursday, October 12, from 8:30 a.m. to 3:45 p.m.

Place: The Tradewinds Sandpiper Hotel, 6000 Gulf Boulevard, St. Pete Beach, Florida 33706; Phone number 727/360–5551. Fax number 727/526–1282.

Status: The executive session will be closed to the public. At it, matters relating to international negotiations in process, personnel, and the budget of the Commission will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

Matters To Be Considered: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. The focus of the meeting will be on species that occur in waters along the Atlantic and Gulf of Mexico coasts of the United States. While subject to change, major issues that the Commission plans to consider at the meeting include: research and management issues related to the Florida population of West Indian manatees, the Atlantic and Gulf populations of bottlenose dolphins, northern right whales, and the effects of noise on marine mammals.

Contact Person for More Information: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301/504–0087.

Dated: July 10, 2000.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 00–17701 Filed 7–10–00; 10:24 am]

BILLING CODE 6820–31–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: August 9–11, 2000, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joy Pauschke, Program Director, National Earthquake Engineering Simulation Program, Room 580, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 National Earthquake Engineering Simulation Review Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17634 Filed 7–11–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Revised Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Names: Special Emphasis Panel in Engineering Education and Centers (173).

Dates: July 27–28, 2000 7:30 a.m. to 5:30 p.m. (previously announced for July 17–18, 2000).

Place: National Science Foundation, Room 580, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the SunShine Act.

Reason for Revision: To change dates and location of meeting.

Dated: July 7, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17633 Filed 7–11–00; 8:45 am]

BILLING CODE 7555–01–M.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Revised

The ACRS Subcommittee on Planning and Procedures scheduled to start at 1 p.m. on *Tuesday, July 11, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland has been changed to start at 9 a.m.* Notice of this meeting was published in the **Federal Register** on Monday, June 26, 2000 (65 FR 39446). All other items pertaining to this meeting remain the same as previously published.

FOR FURTHER INFORMATION CONTACT: Dr. John T. Larkins, cognizant ACRS staff person (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: July 6, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–17623 Filed 7–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 10, 17, 24, 31, August 7, and 14, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 10

Monday, July 10

1:25 p.m.—Affirmation Session (Public Meeting)

a: Rulemaking to Modify the Event Reporting Requirements for Power Reactor in 10 CFR 50.72 and 50.73 and for Independent Spent Fuel Storage Installations (ISFSI) in 10 CFR 72.216

b: Final Rule: 10 CFR Parts 30, 31, and 32—''Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material'' and Related Change to the Enforcement Policy

c: Hydro Resources, Inc. Petition for Review of LBP–99–18, LBP–99–19, and LBP–99–30

1:30 p.m.—Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting)

Tuesday, July 11

9:30 a.m.—Discussion of Intragovernmental Issues (Closed–Ex. 4 and 9)

Week of July 17—Tentative

There are not meetings scheduled for the Week of July 17.

Week of July 24—Tentative

Tuesday, July 25

3:25 p.m.—Affirmation Session (Public Meeting), (If necessary)

Week of July 31—Tentative

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

Tuesday, August 15

9:25 a.m.—Affirmation Session (Public Meeting), (If necessary)

9:30 a.m.—Briefing on NRC International Activities (Public Meeting), (Contact: Ron Hauber, 301–415–2344)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 9, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–17780 Filed 7–12–00; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 17, 2000, through June 30, 2000. The last biweekly notice was published on June 28, 2000 (65 FR 39956).

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 Review 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, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 11, 2000, 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). 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: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: June 21, 2000. This request supplements an earlier application dated October 29, 1999, submitted by GPU Nuclear, Inc., which has since been adopted by AmerGen Energy Company, LLC.

Description of amendment request: The proposed amendment revises the Technical Specifications (TSs) to include: (1) The addition of operating limits for make-up tank (MUT) level and pressure; (2) the addition of surveillance requirements for the MUT pressure instrument channel; and (3) revision of the calibration frequency for the MUT level instrument channel from ''Not to exceed 24 months'' to ''Refueling interval (once per 24 months)'' along with other instruments (high pressure and low pressure injection (LPI) flow instruments and the borated water storage tank (BWST) level instrument) in the same table as appropriate. Associated Bases changes are also proposed. Minor editorial changes (such as updates to the Table of Contents and others) are also proposed. This revision to the original submittal reflects changes to proposed TS Figure 3.3–1 and adds an additional instrument to those for which a surveillance calibration frequency extension is requested.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. *The proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.*

The changes included in this LCA [license change application] impose new requirements for MU/HPI [make-up/high pressure injection] system operation and testing and extension of calibration frequencies for the MUT level, HPI flow and LPI flow instruments and BWST level instrument. These changes could not result in initiation of any accident previously evaluated. Therefore, the probability of an accident could not be affected by changes to the MU/HPI and Decay Heat Removal (DHR) systems.

As described in the list of benefits for operation with MU/HPI cross-connect valves open, listed in section III.B above [section III.B, pages 5–6 of 14, of the June 21, 2000 supplement], the purpose of changing the operation of the MU/HPI system was to preclude the possibility of HPI pump damage. The addition of surveillance requirements for the MUT pressure instrument and the addition of LCO [limiting condition for operation] limits on MUT level and pressure along with appropriate action statements and required action times will ensure that gas entrainment of the MUT does not occur. The proposed change in instrument calibration frequencies will continue to maintain the required accuracy of the MUT level, HPI flow, LPI flow, and BWST level instruments.

Minor editorial changes are included in this request to improve clarity and readability of the T.S. [technical specifications] and could not adversely affect plant operation.

Therefore, the proposed changes will not adversely impact the reliability of the MU/HPI system and could not represent a significant increase in the probability or consequences of an accident previously evaluated.

B. *The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.*

This LCA does not involve the addition of any new hardware. Along with minor editorial changes, the requested changes involve MU/HPI system operation and changes in instrument calibration frequency which have been reviewed in accordance with NRC guidance. Changes to MU/HPI System operation can only affect RCS [reactor coolant system] coolant inventory changes during operation and the ability to provide protection in the event of a Loss of Coolant Accident (LOCA). The full spectrum of LOCAs has been evaluated in the FSAR [Final Safety Analysis Report]. Therefore, no new accident scenarios have been created.

The additional controls on MUT level and pressure provided by this LCA will ensure that a malfunction of a different type, gas entrainment of the MU/HPI pumps, will not occur. These limits on MUT level and pressure ensure that the initial conditions assumed for ECCS operation are maintained. The TS limits maintain the accident analysis initial conditions such that no operator action is required to avoid gas entrainment during ECCS [emergency core cooling [system] operation with the postulated single failure as required by the TMI–1 licensing basis (Reference 14) [GPU Nuclear Safety Evaluation No. SE–000211–015, Revision 0, ''Operation with MU X–Connect Valves OPEN''].

Extension of the calibration frequencies for the HPI level, HPI flow, LPI flow, and BWST level will continue to maintain the accuracy of these instruments and could not create the potential for any new accident that has not been evaluated.

Minor editorial changes are included in this request to improve the clarity and readability of the TS and could not adversely affect plant operation.

Therefore, these [proposed] changes do not create the potential for any accident different from those that have been evaluated.

C. *These proposed changes do not involve a significant reduction in a margin of safety.*

This LCA includes changes to MU/HPI system operation and testing and an extension of the calibration frequency for certain instruments. The requested changes will serve to maintain the proper system initial conditions to ensure the ability of the MU/HPI system to provide protection in the event of a Loss of Coolant Accident (LOCA) and maintain the required instrument accuracy for the instruments where changes to a refueling interval frequency are being requested. NRC guidance for addressing the effect on increased surveillance intervals on instrument drift and safety analysis assumptions presented in GL [generic letter] 91–04 have been addressed in enclosure 1A [of the licensee's June 21, 2000 letter].

Minor editorial changes are included in this request to improve clarity and readability of the TS and could not adversely affect plant operation.

These changes, which are consistent with the TMI–1 licensing and design basis requirements, do not result in a degradation of safety related equipment, and therefore, do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis (paragraph 'B') against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The licensee concluded that ''these [proposed] changes do not create the potential for any accident different from those that have been evaluated.'' This conclusion is worded slightly differently than the standard in 10 CFR 50.92 (''The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated'') that the licensee is required to analyze against pursuant to 10 CFR 50.91. Nevertheless, the licensee did state in its application that ''additional controls on MUT level and pressure provided by the proposed changes in this LCA will ensure that a malfunction of a different type, gas entrainment of the MU/HPI pumps, will not occur.'' These additional controls include a prohibited operating region which would require plant shutdown if not corrected.

The licensee further stated, that the portion of the TS Figure 3.3–1 related to NPSH [net positive suction head] has been deleted because operation of MU/HPI pump below the manufacturer's NPSH limits for a short period of time may affect pump performance while the NPSH shortfall exists, but would not render the pump inoperable. The licensee further stated that existing plant procedures will provide NPSH MUT pressure verses level operating limits that will ensure the recommended NPSH would be available for the NPSH limiting event, an HPI line break small-break LOCA. Based on the above, the staff has determined that the proposed changes and additional controls on MUT level and pressure would not create the possibility of a new or different kind of accident from any previously evaluated.

The licensee has determined that the proposed extension of the calibration frequencies for the HPI level, HPI flow, LPI flow, and BWST level, meets applicable staff guidance related to these proposed changes and will continue to maintain the accuracy of these instruments and could not, therefore, create the potential for any new accident that has not been evaluated. The staff has determined that the proposed extension of calibration frequencies would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed editorial changes are minor in nature, and are intended to improve the clarity and readability of the TSs, and would not create the possibility of a new or different kind of accident from any previously evaluated.

Based on this review, and the licensee's basis for its determination with respect to items ''A'' and ''C'' above, 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.

Attorney for licensee: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

NRC Section Chief: Marsha Gamberoni.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendments request: June 6, 2000.

Description of amendments request: The proposed amendments would revise information in Figure 3.5.5–1, ''Minimum Required RWT Volume,'' in Technical Specification (TS) 3.5.5, ''Refueling Water Tank (RWT),'' of the TSs for the three units. The amendments are administrative changes to the figure that would (1) Relocate design bases information to the Bases of the TSs, (2) truncate the lower end of the RWT limit curve at 210 °F, (3) re-title the right-hand ordinate from ''minimum useful volume required in the RWT'' to ''RWT Volume,'' and (4) delete the two footnotes and the references to the footnotes.

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 in its application, which is presented below:

Standard 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed administrative change does not involve any changes to the design, operation, or maintenance of any structures[,] systems or components. The requirements in TS 3.5.5 for RWT operability will not be changed. This proposed amendment [for each unit] does not alter, degrade, or prevent actions described or assumed in an accident described in the PVNGS UFSAR [Updated Final Safety Analysis Report] from being performed. It will not alter any assumptions previously made in evaluating radiological consequences or, affect any fission product barriers. It does not increase any challenges to safety systems as well. Any changes to the information relocated to the TS Bases would be controlled under the TS Bases Control program, TS 5.5.14, which utilizes the criteria of 10 CFR 50.59 to determine if prior NRC [Nuclear Regulatory Commission] approval is required for any changes. Therefore, this proposed amendment [for each unit] would not significantly increase the consequences of an accident previously evaluated.

Standard 2: Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed administrative change does not involve any changes to the design, operation, or maintenance of any structures[,] systems or components. The requirements in TS 3.5.5 for RWT operability will not be changed. This proposed amendment [for each unit] does not alter, degrade, or prevent actions described or assumed in an accident described in the PVNGS UFSAR from being performed. Any changes to the information relocated to the TS Bases would be controlled under the TS Bases Control program, TS 5.5.14, which utilizes the criteria of 10 CFR 50.59 to determine if prior NRC approval is required for any changes.

Therefore, the proposed amendment [for each unit] does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3: Does the proposed change involve a significant reduction in a margin of safety?

This proposed administrative change does not involve any changes to the design, operation, or maintenance of any structures[,] systems or components. The requirements in TS 3.5.5 for RWT operability will not be changed. This proposed amendment [for each unit] does not alter, degrade, or prevent actions described or assumed in an accident. Any changes to the information relocated to the TS Bases would be controlled under the TS Bases Control program, TS 5.5.14, which utilizes the criteria of 10 CFR 50.59 to determine if prior NRC approval is required for any changes. Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendments request: June 6, 2000.

Description of amendments request: The proposed amendments would restrict the emergency diesel generator (DG) acceptance criteria for steady-state voltage and frequency in several surveillance requirements (SRs) involving DG starts in Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' of the TSs for the three units. The amendments would also add a note to each SR that states: ''The steady state voltage and frequency limits are analyzed values and have not been adjusted for instrument error.'' The restricted acceptance criteria is to ensure proper DG operation.

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 in its application, which is presented below:

Standard 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not significantly increase the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The more restrictive steady-state voltage and frequency ranges ensure that the equipment being powered by the diesel generator will function as required to mitigate an accident as described in the UFSAR. The diesel generators are part of the systems required to mitigate an accident. Mitigation equipment is not a factor in accident initiation and, therefore, the probability of an accident previously evaluated will not be significantly increased.

The change to the steady state diesel generator voltage and frequency acceptance limits does not increase the probability of a diesel generator failure [or a failure of offsite power]. Therefore, this change does not increase the probability of a station blackout event.

The consequences of an accident previously evaluated in the UFSAR will not be significantly increased. The more restrictive change to the diesel generator

steady-state voltage and frequency acceptance limits ensures that the equipment powered by the diesel generators will perform as analyzed and mitigate the consequences of any accident described in the UFSAR. Therefore, the change in steady-state voltage and frequency acceptance limits is within the bounds of previously analysis in the UFSAR and does not involve a significant increase in the consequences of an accidently previously evaluated.

Standard 2: Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The possibility of an accident of a new or different kind from any accident previously evaluated has not been created. The more restrictive change to the diesel generator steady-state voltage and frequency acceptance limits ensures that the equipment powered by the diesel generators will perform as analyzed. This equipment and the diesel generators mitigate the consequences of an accident. Mitigation equipment does not contribute to accident initiation. Making existing requirements more restrictive will not alter the plant configuration (no new or different type of equipment will be installed) or change the methods governing normal plant operation. These changes are consistent with the assumptions made in the safety analysis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3: Does the proposed change involve a significant reduction in a margin of safety?

No. The change to the diesel generator steady-state voltage and frequency acceptance limits ensures that the equipment powered by the diesel generators will perform as analyzed. This equipment and the diesel generators mitigate the consequences of an accident. This change maintains the required function of the equipment powered by the diesel generators and ensures the required operation of the plant and any structures[,] systems, or components is as intended by the safety analysis. 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 that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 7, 2000.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) related to the Engineered Safety Features Actuation System (ESFAS) Instrumentation found in TS 3/4.3.1, TS 3/4.3.2, and the associated Bases. Specifically, the proposed change would revise surveillance test intervals and allowed outage times for ESFAS instrumentation in TS 3/4.3.2. The proposed revision is based on WCAP–10271, ''Evaluation of Surveillance Frequencies and Out of Service Times for the Reactor Protection Instrumentation System,'' its supplements, and the NRC approvals issued in the Safety Evaluation Reports (SERs) dated February 21, 1985, and February 22, 1989, and the Supplemental SER dated April 30, 1990. In addition, the licensee is proposing specific changes to the reactor trip system instrumentation in TS 3/4.3.1, which are directly associated with implementing the ESFAS relaxations proposed in the submittal.

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 amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The determination that the results of the proposed changes are within all acceptable criteria was established in the SERs prepared for WCAP–10271 Supplement 2 and WCAP–10271 Supplement 2, Revision 1 issued by letters dated February 22, 1989 and April 30, 1990. Implementation of the proposed changes is expected to result in an acceptable increase in total Engineered Safety Features Actuation System yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in a small increase in core damage frequency (CDF) and public health risk. The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered to be acceptable.

Removal of the requirement to perform the Reactor Trip System analog channel operational test on a staggered basis will have a negligible impact on the Reactor Trip System unavailability. Staggered Testing was initially imposed to address the concerns of common cause failures. HNP's [Harris Nuclear Plant's] program to evaluate failures for common cause, process parameter signal diversity, and normal operational test spacing yield most of the benefits of staggered testing.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes may affect the probability of failure of the RPS [reactor protection system], but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

2. *The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed changes do not involve hardware changes and do not result in a change in the manner in which the Reactor Protection System provides plant protection or the manner in which surveillances are performed to demonstrate operability. No change is being made which alters the functioning of the Reactor Protection System. Rather the likelihood or probability of the Reactor Protection System functioning properly is affected as described above.

Therefore the proposed changes do not create the possibility of a new or different kind of accident.

3. *The proposed amendment does not involve a significant reduction in the margin of safety.*

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (*e.g.,* drift) may act. An evaluation has been performed to assure that the plant setpoints properly account for these instrument uncertainties over the larger time interval.

Implementation of the proposed changes is expected to result in an overall improvement in safety as follows:

a. Less frequent testing will result in fewer inadvertent reactor trips and inadvertent actuations of Engineered Safety Features Actuation System components.

b. Less frequent distraction of the operator and shift supervisor to attend to and support instrumentation testing will improve the effectiveness of the operating staff in monitoring and controlling plant operation.

The foregoing analysis demonstrates that the proposed amendment to HNP TS does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident, and does not involve a significant reduction in a margin of safety.

Based upon the preceding analysis, CP&L [Carolina Power & Light Company] concludes that the proposed amendment does not involve a significant hazards consideration.

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.

Attorney for licensee: William D. Johnson, Vice President and Corporate

Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: May 11, 2000.

Description of amendment request: The proposed changes would revise Technical Specification Surveillance Requirement (SR) 3.6.1.3.8. SR 3.6.1.3.8 currently requires verification of the actuation capability of each excess flow check valve (EFCV) every 24 months. This proposed change would relax the SR frequency by allowing a ''representative sample'' of reactor instrument line EFCVs to be tested every 24 months, such that each reactor instrument line EFCV will be tested at least once every 10 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided an analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The current SR frequency requires each reactor instrument line EFCV to be tested every 24 months. The reactor instrument line EFCVs at WNP–2 are designed so that they will not close accidentally during normal operation, but will close if a rupture of the instrument line is indicated downstream of the valve, and have their status indicated in the control room. This proposed change allows a reduced number of reactor instrument line EFCVs to be tested every 24 months. There are no physical plant modifications associated with this change. Industry operating experience demonstrates a high reliability of these valves. Neither reactor instrument line EFCVs nor their failures are capable of initiating previously evaluated accidents; therefore; there can be no increase in the probability of occurrence of an accident regarding this proposed change.

Reactor instrument lines connecting to the reactor coolant pressure boundary are equipped with EFCVs and also have a flow-restricting orifice inside containment and upstream of the EFCV. The consequences of an unisolable rupture of such an instrument line has been previously evaluated in WNP–2 FSAR 15.6.2. The instrument lines that penetrate primary containment conform to Regulatory Guide 1.11 (WNP–2 FSAR 7.1.2.4). Those instrument lines are Seismic Category I and terminate in instruments that are Seismic Category I (reference WNP–2 FSAR Table 6.2–16 note 27).

The sequence of events in WNP–2 FSAR Section 15.6.2.2 for a reactor instrument line break assumes a continuous discharge of reactor water through the instrument line until the reactor vessel is cooled and depressurized (5 hours). Although not expected to occur as a result of this change, the postulated failure of an EFCV to isolate as a result of reduced testing is bounded by this previous evaluation. Therefore, there is no increase in the previously evaluated consequences of the rupture of an instrument line and there is no potential increase in the consequences of an accident previously evaluated as a result of this change.

The containment atmosphere and suppression pool instrument line EFCVs are required to remain open to sense containment atmosphere and suppression pool level conditions during postulated accidents. They are not required to close during an instrument line break assumed during normal plant operation nor is their design capable of closing during normal plant conditions. These EFCVs do not meet the criteria for inclusion in 10 CFR 50.36(c)(3) as they have no active safety function and thus relocation of their testing requirements to processes controlled under 10 CFR 50.59 cannot affect the probability or consequences of an accident previously evaluated.

2. *The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

This proposed change allows a reduced number of reactor instrument line EFCVs to be tested each operating cycle and that the testing requirements for containment atmosphere and suppression pool instrument line EFCVs be relocated to a process controlled under 10 CFR 50.59. No other changes in requirements are being proposed. Industry operating experience demonstrates the high reliability of these valves. The potential failure of a reactor instrument line EFCV to isolate by the proposed reduction in test frequency is bounded by the previous evaluation of an instrument line rupture. This change will not physically alter the plant (no new or different type of equipment will be installed). This change will not alter the operation of process variables, structures, or components as described in the safety analysis. Thus, a new or different kind of accident will not be created.

3. *The proposed change does not involve a significant reduction in a margin of safety.*

The consequences of an unisolable rupture of an instrument line has been evaluated in WNP–2 FSAR Section 15.6.2 in accordance with the requirements of Regulatory Guide 1.11. That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence (5 hours). The only margin of safety applicable to this proposed change is considered to be that implied by this evaluation. Since a continuous discharge was assumed in this evaluation, any potential failure of a reactor instrument line EFCV to isolate as a result of reduced testing frequency is bounded by existing analysis and does not involve a significant reduction in the margin of safety.

There is no accident for which the containment atmosphere or suppression pool instrument line EFCVs are designed to actuate to the isolation position for mitigation. A postulated break of a containment atmosphere or suppression pool instrument line under normal operating conditions would not result in a condition that would create the ability for these EFCVs to operate because neither the containment pressure nor the suppression pool level head would be sufficient to result in their actuation. As these EFCVs have no active design or safety function, the relocation of testing requirements would not involve a significant reduction in the margin of safety. A postulated break of any instrument line simultaneous with a loss of coolant accident is beyond the design basis for the plant.

Based upon the above, the proposed amendment is judged to involve no significant hazards considerations.

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.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 25, 2000.

Description of amendment request: The proposed amendment would change the action statements for Technical Specification (TS) 3.8.2.2, A.C. Distribution—Shutdown, and TS 3.8.2.4, D.C. Distribution—Shutdown, by replacing the requirement to establish containment integrity within 8 hours, with a requirement to immediately suspend core alterations, the movement of irradiated fuel assemblies, and any operations involving positive reactivity additions. Related changes to the associated Bases were also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The existing requirement to establish containment integrity upon a loss of a required AC or DC bus in Mode 5 or 6 is not relied upon in any ANO–2 [Arkansas Nuclear One, Unit 2] accident analysis. Other components that may be rendered inoperable upon the loss of a required AC or DC bus are governed by other TSs and associated action

statements. Such functions include core cooling, reactor coolant makeup capabilities, the status of containment penetrations and openings, and reactor coolant inventory. The TSs that govern these functions provide appropriate actions to address the failure at hand. The proposed change[s] act to minimize the possibility of a fuel handling accident when a required AC or DC bus is inoperable by requiring the suspension of the handling of irradiated fuel and core alterations. In addition, ANO–2 has demonstrated that the offsite dose consequences of a fuel handling accident within the containment building remain well within 10 CFR 100 limits without taking credit for the containment's fission product control function. Deleting the requirement to establish containment integrity is not relevant to the initiation of any accident previously evaluated, nor does it significantly increase the consequences of any accident previously evaluated. Other TS LCOs [limiting conditions for operation] provide appropriate actions that address shutdown cooling (SDC), makeup capability and inventory, and other important functions. The proposed change deletes the requirement to establish containment integrity in favor of those actions that act to minimize the likelihood of a fuel handling accident or a positive reactivity excursion. The proposed change reduces unnecessary actions required upon the loss of an AC or DC bus and provide greater consistency with the philosophies of the RSTS [Revised Standard Technical Specifications].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The existing actions associated with shutdown mode AC and DC TS sources are not considered accident initiators. The proposed revision does not present a physical change to plant systems or equipment. Deleting the requirement to establish containment integrity in favor of actions that aid in minimizing the likelihood of a fuel handling accident or positive reactivity excursion does not result in any new or different kind of accident from any previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The existing requirement to establish containment integrity upon a loss of any required AC or DC bus in Modes 5 or 6 acts to limit offsite release consequences should an accident occur during the period of inoperability. The proposed change acts to address the source, that is, aids in minimizing the likelihood of a fuel handling accident or an undetected positive reactivity addition while in Modes 5 and 6. By suspending all handling of irradiated fuel and core alterations, the likelihood of a fuel handling accident occurring is minimized. Since the loss of a required AC or DC bus could impact plant instrumentation, the suspension of all activities involving positive reactivity additions aids in preventing the impact of a positive reactivity addition from being undetected. Other possible Mode 5 and 6 conditions (loss of inventory, loss of shutdown cooling, etc.) are addressed in other shutdown mode TSs. In addition, ANO–2 has demonstrated that the offsite dose consequences of a fuel handling accident within the containment building remain well within 10 CFR 100 limits without taking credit for the containment's fission product control function. Since the proposed change exchanges accident mitigation strategy in favor of accident prevention strategy, no significant reduction in the margin to safety is evident.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: May 1, 2000.

Description of amendment request: The proposed amendment would: (1) Revise Technical Specification (TS) requirements regarding the minimum number of radiation monitoring instrumentation channels required to be operable during movement of fuel within the containment; (2) revise the Modes in which the surveillance specified by Table 4.3–3, ''Radiation Monitoring Instrumentation Surveillance Requirements,'' Item 2.c.ii is required; (3) revise TS 3.9.4, ''Containment Building Penetrations,'' to allow both Personnel Air Lock (PAL) doors and other containment penetrations to be open during movement of fuel assemblies within containment, provided certain conditions are met; (4) revise applicability and action statement requirements of TS 3.9.4. to be for only during movement of fuel assemblies within containment; (5) revise periodicity and applicability of Surveillance Requirement (SR) 4.9.4.1; (6) revise SR 4.9.4.2 to verify flow rate of air to the supplemental leak collection and release system (SLCRS) rather than verifying the flow rate through the system; (7) add two new SRs, 4.9.4.3 and 4.9.4.4, for verification and demonstration of SLCRS operability; (8) modify TS 3/4.9.9 for the containment purge exhaust and isolation system to be applicable only during movement of fuel assemblies within containment; and, (9) revise associate TS Bases as well as make editorial and format changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?*

The proposed amendment involves changes to accident mitigation system requirements. These systems are related to controlling the release of radioactivity to the environment and are not considered to be accident initiators to any previously analyzed accident.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Based on the current technical specification requirements, an environmental release due to a fuel handling accident (FHA) occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment, which permits containment penetrations to be open during movement of fuel assemblies within containment, increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. Based on a radiological analysis of a FHA within containment with open containment penetrations being filtered by the Supplemental Leak Collection and Release System (SLCRS), the resultant radiological consequences of this event are well within the 10 CFR Part 100.11 limits, as defined by acceptance criteria in the Standard Review Plan (SRP) Section 15.7.4. Control room operator doses remain less than the 10 CFR Part 50 Appendix A General Design Criteria (GDC) 19 limit of 5 rem whole body or its equivalent to any part of the body. The proposed changes to LCO 3.9.4 and associated surveillance requirements will ensure that SLCRS filtration assumptions in the associated radiological analysis are met.

LCO 3.9.10 titled ''Water Leve—Reactor Vessel'' will continue to ensure that at least 23 feet of water is maintained over the fuel during fuel movement when the plant is in Mode 6. LCO 3.9.3 titled ''Decay Time'' will continue to ensure that irradiated fuel is not moved in the reactor pressure vessel until at least 150 hours after shutdown. These LCOs will continue to ensure that two of the key

assumptions used in the radiological safety analysis are met.

The radiological consequences of the Core Alteration events other than the FHA remain unchanged. These events do not result in fuel cladding integrity damage. A radioactive release to the environment is not postulated since the activity is contained in the fuel rods. Therefore, the affected containment systems are not required to mitigate a radioactive release to the environment due to a Core Alteration event.

The proposed revision in the minimum number of the Containment Purge Exhaust Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA inside containment.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevant to this specification.

Therefore, the proposed amendment does not significantly increase the consequences of any previously evaluated accident.

2. *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed amendment affects a previously evaluated accident; e.g., FHA. The proposed amendment does not represent a significant change in the configuration or operation of the plant. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate other Core Alteration events. The filtered SLCRS that will be utilized to control and filter the radioactive release from a FHA occurring within containment is the same system (with the exception of the flow path to the filter banks) currently relied upon to control and filter the release from a FHA in the fuel building. The primary function of SLCRS is to ensure that radioactive leakage from the primary containment following a Design Basis Accident (DBA) or radioactive release due to a fuel building FHA is collected and filtered for iodine removal prior to discharge to the atmosphere at an elevated release point through a ventilation vent. This system will be relied upon to control the releases from open containment penetrations should a FHA occur inside of containment until such time that these open containment penetrations can be isolated. The proposed amendment contains the requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment.

The filtered SLCRS that will be relied upon to mitigate a FHA within containment is classified as Quality Assurance (QA) Category I, Safety Class 3 and Seismic Category I as stated in Updated Final Safety Analysis Report (UFSAR) Section 6.5.3.2.1 titled ''Design Bases.'' As described in UFSAR Section 6.5.1 titled ''Engineered Safety Feature Filter Systems,'' filtered SLCRS is considered to be an engineered safety features (ESF) filter system used to mitigate the consequences of accidents.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the change involve a significant reduction in a margin of safety?*

Based on the current technical specification requirements, an environmental release due to a FHA occurring within containment is precluded by a design which automatically isolates the containment following detection of radioactivity by redundant containment purge monitors. The proposed amendment increases the dose at the site boundary and the control room operator dose due to a FHA occurring within containment; however, the dose remains within acceptable limits. The margin of safety as defined by 10 CFR Part 100 has not been significantly reduced.

The revised radiological analysis based on the proposed amendment demonstrates that during a FHA inside containment, the projected offsite doses will be well within the applicable regulatory limits of 10 CFR Part 100.11 of 300 rem thyroid and 25 rem whole body, and are less than the more restrictive guidance criteria in the SRP Section 15.7.4 of 75 rem thyroid and 6 rem whole body. Control room operator doses are less than the 10 CFR Part 50 Appendix A GDC 19 limit of 5 rem whole body or its equivalent to any part of the body. This radiological analysis is based on all airborne activity reaching the containment atmosphere, as a result of a FHA inside containment, being released to the environment over a 2 hour period. The 2 hour release period is based on the guidance contained in Regulatory Guide 1.25 titled ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors.'' The proposed amendment contains a Bases requirement to maintain the capability to close open containment penetrations within 30 minutes following a FHA inside containment. Completion of this action will reduce the dose consequence of a FHA within containment by terminating the release to the environment prior to all airborne activity being released from the containment.

The margin of safety for Core Alteration events other than the FHA is not significantly reduced due to this proposed amendment. The proposed amendment does not impact Technical Specification requirements for systems needed to prevent or mitigate such Core Alteration events. These events do not result in fuel cladding integrity damage. Therefore, a radioactive release to the environment is not postulated since the activity is contained in the fuel rods.

The proposed revision in the minimum number of the Containment Purge Exhaust Radiation Monitoring Instrumentation channels required to be operable from one to two, ensures that redundant instrument channels are available to detect and initiate isolation of the containment purge and exhaust containment penetrations during a FHA occurring inside containment.

The proposed changes to SR 4.9.4.1 and SR 4.9.9, to remove unnecessary detail on when these surveillances are required to be performed, are administrative in nature and do not affect plant safety.

The proposed revision of the words ''through the'' to the words ''to filtered'' in SR 4.9.4.2.a does not change the LCO 3.9.4 requirements. This change makes the LCO and surveillance requirements consistent. This change is administrative in nature and does not affect plant safety.

The proposed administrative, editorial, and format changes do not affect plant safety. The Bases section has been revised as necessary to reflect the changes to these Specifications. Bases Section 3/4.9.9 will also be revised to remove text pertaining to Mode 5 applicability that is not relevant to this specification.

Therefore, the proposed amendment 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.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Acting Section Chief: Marsha Gamberoni.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: May 31, 2000.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 Improved Technical Specifications (ITS) to add an additional Condition and Required Action to ITS 3.3.11, ''Emergency Feedwater Initiation and Control (EFIC) System Instrumentation.'' The Action would require tripping the affected reactor coolant pump (RCP) status signals to each of the four EFIC channels when one or more RCP status signals or Reactor Coolant Pump Power Monitors (RCPPMs) for up to two RCPs become inoperable. This action is intended to ensure continued operability of the EFIC RCP status function when one or more RCPPMs or their associated RCP status signals are inoperable. The amendment also proposes changes to ITS Table 3.3.11–1 to properly characterize the configuration of the signals from the RCPPMs to EFIC, and to clarify source of the Loss of Main Feedwater Pump signals to EFIC. The proposed changes to Table 3.3.11–1 are intended to provide consistency between Table

3.3.11–1 and information provided in the ITS Bases for the EFIC System Instrumentation Specification.

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 not involve a significant increase in the probability or consequences of an accident previously analyzed.*

The EFIC system is not an initiator of any design basis accident. The EFIC RCP status signal function is intended to ensure emergency feedwater is available to automatically raise levels in the once through steam generator (OTSG) to the natural circulation setpoint in the event of a loss of reactor coolant system (RCS) forced flow.

The proposed license amendment adds clarifying information to ITS Table 3.3.11–1, and an additional Required Action to ITS 3.3.11 that assures continued operability of the RCP status function of the EFIC system in the event one or more RCPPMs or their associated RCP status signals become inoperable. The design functions of the EFIC system and the initial conditions for accidents that require EFIC will not be affected by the change. Therefore, the change will not increase the probability or consequences of an accident previously evaluated.

2. *Does not create the possibility of a new or different kind of accident from any accident previously analyzed.*

The proposed amendment involves no changes to the design or operation of the EFIC system. The RCPPMs are part of the design of the Emergency Feedwater Initiation and Control (EFIC) System, and are assumed to function properly in the accident analysis. The proposed amendment will assure that the EFIC system performs as assumed in the safety analysis in the event of a loss of RCS forced flow. The proposed amendment change will not affect the other EFIC functions, and will not create any new plant configurations. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does not involve a significant reduction in the margin of safety.*

The proposed amendment adds additional actions to be taken in the event one or more RCPPMs or their associated RCP status signals become inoperable, and provides clarifying information regarding the sources and configuration of signals to EFIC. The proposed amendment ensures appropriate actions are taken to restore the operability of the EFIC RCP status function in the event that one or more RCP status signals to EFIC are lost. Thus, the proposed amendment will not result in a 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard P. Correia.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: June 1, 2000.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications 3.4.14 to extend the interval for calibration of the containment sump monitor from the current 18 months to 24 months. The monitor is used to detect and measure reactor coolant system (RCS) leakage by monitoring changes in the level of water in the containment sump. Extending the interval to 24 months would make it consistent with the current CR–3 operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

The containment sump monitor is not an initiator of any design basis accident. This monitor is used during normal plant operation to measure and to trend the rate of change of containment sump fluid level.

The containment sump monitor does not perform any safety function as part of mitigating the consequences of a design basis accident. Separate safety-related instrumentation is used to determine post-accident containment sump and containment flood levels and to satisfy the requirements of Regulatory Guide (RG) 1.97 for post-accident monitoring instrumentation. Additionally, the containment sump monitor does not have any associated safety system setpoint. The level switch in the instrument circuit is used only for automatic pumping of sump fluid using the two containment sump pumps.

A longer interval between calibrations may result in some increase in the amount of drift that the containment sump level monitor might experience between calibrations. The behavior of instrumentation, including considerations such as the amount of drift that the instrument might experience between calibrations, is not an accident precursor. Thus, changes to instrument maintenance such as intervals for performance of calibration, and the behavior of instruments including such considerations as the amount of drift, do not affect the probability of an accident. The probability of an accident previously evaluated is independent of the amount of drift that the containment sump level monitor might experience.

The containment sump monitor is used to detect RCS leakage during normal operation and does not have an accident mitigation function. Additionally, the ability of the instrument to detect small leaks will not be affected by extending the calibration interval.

Based on the above, increasing the interval between calibrations does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. *Create the possibility of a new or different kind of accident from any accident previously evaluated*?

The proposed license amendment involves no changes to the design or operation of the containment sump level monitor. Extending the interval between calibrations of the containment sump level monitor from 18 months to 24 months might result in greater drift of the monitor during the period of operation. However, the only function of the monitor is to detect changes and trends in the containment sump level during normal operation and the amount of drift that the monitor has experienced does not affect its ability to measure such changes and trends of the containment sump level. Furthermore, changes in the behavior of instrumentation, such as the amount of drift that the instrument might experience between calibrations, do not create the possibility of a new or different kind of accident.

Because initiation of accidents is independent of instrumentation behavior parameters such as drift, extending the calibration interval from 18 to 24 months does not create the possibility of any new or different kind of accident from any previously evaluated.

3. *Involve a significant reduction in a margin of safety*?

The CR–3 operating license, i.e., the Improved Technical Specifications, requires that instrumentation to detect leakage of reactor coolant system (RCS) inventory be available and operable during power operation. The required instrumentation is one containment sump monitor and one containment atmosphere radioactivity monitor.

The proposed extension of the containment sump monitor calibration interval from 18 to 24 months does not compromise the ability of the instrumentation to perform its safety function, *i.e.*, early detection of RCS leakage. This is so because the only function of the containment sump monitor is to detect changes and trends in the containment sump level during normal operation. The proposed license amendment makes no changes to either the design or operation of the sump monitor. The proposed license amendment makes no changes to the license requirements or to the design or operation of the containment atmosphere radioactivity monitor.

Because no changes are made to either the design or operation of the sump monitor, the

sump monitor remains operable with the requested changes, and no changes are made to the containment atmosphere radioactivity monitor, FPC concludes that the change does 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard P. Correia.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: June 8, 2000.

Description of amendment requests: The proposed amendments would approve changes to the Updated Final Safety Analysis Report (UFSAR) to allow the use of probabilistic risk assessment (PRA) techniques in evaluating the need for tornado-generated missile barriers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) *Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated*?

The possibility of a tornado reaching the Donald C. Cook Nuclear Plant (CNP) site is a design basis event considered in the UFSAR. The proposed change does not affect the probability that a tornado will reach the CNP site. However, the change affects the probability assumed in the current licensing basis that missiles generated by the winds of a tornado might strike certain plant systems or components.

No other accident scenarios, new initiators, or event precursors are affected or introduced by this change. There are a limited number of safety-related components that could potentially be struck by a tornado-generated missile. The total (aggregate) probability of exceeding 10 CFR 100 guidelines resulting from tornado missile strikes remains below the acceptance criterion ensuring overall plant safety. Thus, the proposed change does not constitute a significant increase in the probability of occurrence of an accident.

This change does not result in an increase in the quantity of radioactive materials potentially available for release to the environment in the event of an accident. The principle barriers to the release of radioactive materials are not modified or affected by this change. No new release pathways are created. Thus, the proposed change does not significantly affect potential offsite dose consequences.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

(2) *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated*?

The possibility of a tornado reaching CNP site is a design basis event considered in the UFSAR. This change recognizes the acceptability of performing tornado missile probability calculations in accordance with established regulatory guidance. The change, therefore, deals with an established design basis event (the tornado). The change does not affect or create new accident initiators or precursors. Therefore, the change does not contribute to the possibility of a new or different kind of accident from those previously analyzed.

Therefore, the change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) *Does the change involve a significant reduction in a margin of safety?*

The existing licensing basis for CNP, with respect to the design basis event of a tornado reaching the plant, generating missiles, and directing them toward safety-related systems and components, is to provide positive missile protection for every required SSC [System, Structure, and Component] or area. This change recognizes the extremely low probability, below an established acceptance limit, that a limited subset of SSCs, and areas could be struck. This change from ''protecting all required systems, structures, and components'' to an ''extremely low probability of exceeding 10 CFR 100 guidelines as a result of tornado-generated missiles,'' does not constitute a significant decrease in the margin of safety due to the extremely low probability.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment requests: May 15, 2000.

Description of amendment requests: The proposed amendments would change Technical Specification 3.7.B.6 one time only to explicitly allow de-energizing Motor Control Center (MCC) 1T1 and MCC 1T2. The proposed change would allow either MCC 1T1 or MCC 1T2, one at a time, to be out of service for up to 72 hours provided the redundant MCC, its associated 480 Volt bus is verified operable, and the diesel generator and safeguards equipment associated with the redundant MCC are operable. The reason for the change is to install transfer switches for MCC 1T1 and MCC 1T2 for personnel protection, and to increase the allowed outage time for the MCC's to ensure sufficient time to install the transfer switches. This would prevent a dual unit shutdown to install each transfer switch under current Technical Specification 3.7.B.6.

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 amendment will not involve a significant increase in the probability or consequences of accident previously evaluated.

The proposed changes do not involve any systems, structures or components whose failure would initiate an accident, thus, this change does not affect the probability of an accident.

The proposed changes extend the allowed out of service time for MCC 1T1 and MCC 1T2. The proposed changes would be applied only in support of a one-time modification to install transfer switches for the affected MCC's. The proposed changes do not extend the allowed out of service time for any components, supplied by these MCC's, that are relied on to mitigate the consequences of an accident. Thus, this change does not significantly increase the expected consequences of an accident.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not change the way any systems, structures or components are operated. Nor does the proposed change introduce any new failure modes.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes do not extend the allowed out of service times for any safety related components powered by the affected MCC's. Further, the proposed changes only allow one train (one of the affected MCC's) to be out of

service and only if the opposite train MCC, its supporting sources and supplied safeguards equipment is verified operable. Thus, the proposed changes do not substantially impact the ability of operators to protect the fuel cladding, reactor coolant system or containment.

Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards *consideration.*

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: May 12, 2000.

Description of amendment requests: The proposed amendment would allow the design upgrade of the refueling water purification (RWP) system from design class II/non-seismic category 1 to design class I/seismic category 1 for purposes of permitting the cleanup of the refueling water storage tank (RWST) water while the RWST is required to be operable. This license amendment request (LAR) also proposes to allow the crediting of operator action to isolate a manual code boundary valve connected to the RWST following a seismic event or safety injection. It is desired to take suction from the RWST through an existing tank drain line to facilitate RWST recirculation through a non-seismically qualified reverse osmosis system while the RWST is required to be operable. This reverse osmosis system will be used to remove silica from the RWST water.

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 upgrade of the refueling water purification (RWP) system piping will allow connection of the RWP system to the refueling water storage tank (RWST) while the RWST is required to be operable. The installation and use of a reverse osmosis (RO) system will allow removal of silica from the RWST while the RWST is required to be operable. The upgrade to the RWP system piping and use of the RO system does not involve any changes or create any new interfaces with the reactor coolant system or main steam system piping. Operation of the RWST is required to mitigate a loss-of-coolant and main steam line break accident, therefore, the connection of the RWP system to the RWST and use of the RO system would not affect the probability of these accidents occurring.

Neither the RWP system nor the RO system are credited for safe shutdown of the plant or accident mitigation. The upgrade to the RWP system piping to seismic category I will prevent seismically induced failure of the RWP system piping and thus prevent a loss of RWST inventory while the RWP system is connected to the RWST. The RWST can perform its safety function with an active failure in the RWP system in the short term phase of an accident while the RWP system is connected to the RWST. The RWST can perform its safety function with an active or passive failure in the RO system in the short term phase of an accident. Since the RWST inventory is not credited in the long term phase of an accident, active and passive failures in the RWP or RO system in the long term phase of an accident need not be considered.

Continuous operation of the RWP pump during a design basis event will not reduce the RWST water inventory nor the emergency core cooling system (ECCS) pump suction supply. The increase in RWST discharge flow due to an operating RWP pump will not adversely impact the required net positive suction head of the operating ECCS pumps.

A combination of design and administrative controls ensure that both the RWP and RO systems maintain RWST boron concentration and tank volume requirements whenever the contents of the RWST are processed through these systems. Potential boron dilution or volume losses of the RWST inventory during tank processing through the RWP system is prevented by administratively maintaining closed all manual boundary valves within the RWP system while the RWP system is used to clarify RWST contents. Prior to RO system operation, the RWST volume margin will be verified to be adequate to compensate for postulated RO system line losses and process losses through the RO system reject waste stream. The waste stream losses will be monitored throughout RO system operation. The RO system is designed to maintain a high boron recovery rate, which will be verified through testing prior to initial installation. Potential boron dilution during each batch operation of the RO system is prevented through verifying RWST boron margin prior to RO system operation and monitoring the RO system boron recovery rate by grab samples taken of the system inlet and outlet after each batch operation. Following each batch operation of the RO system, RWST mixing and sampling will be performed to verify the RWST boron concentration, and boron additions to the RWST will be made accordingly. Since the RWST will continue to perform its safety function, overall system performance is not affected, assumptions previously made in evaluating the consequences of the accident are not altered, and the consequences of the accident are not increased.

Therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. *The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The upgrade of the RWP system piping to seismic category I will prevent seismically induced failure of the RWP piping. An active RWP pump failure will not result in a loss of the RWST safety function. An active or passive failure in the RO system will not result in loss of the RWST safety function. Adequate RWST volume and boron margin will be verified prior to RO system operation, the RO system boron recovery rate will be monitored by grab samples taken of the system inlet and outlet after each batch operation, a flow limiting device will limit the maximum potential RWST inventory loss rate to a low value, and operator action can be taken within 1 hour to isolate the RO system from the RWST. The upgrade to the RWP system and use of the RO system do not impact any other systems and thus cannot create a new failure mode in another system which could potentially create a new type of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *The proposed change does not involve a significant reduction in a margin of safety.*

Neither the RWP system nor the RO systems are credited for safe shutdown of the plant or accident mitigation. The upgrade to the RWP system piping to seismic category I will prevent seismically induced failure of the RWP system piping and prevent loss of RWST inventory due to a seismic event while the RWP system is connected to the RWST. The RWST can perform its safety function with an active failure in the RWP system in the short term phase of an accident while the RWP system is connected to the RWST. The RWST can perform its safety function with an active or passive failure in the RO system in the short term phase of an accident. Since the RWST inventory is not credited in the long term phase of an accident, active and passive failures in the RWP or RO system in the long term need not be considered.

Adequate RWST volume and boron margin will be verified prior to RO system operation, a flow limiting device will limit the maximum inventory loss rate to a low value, and operator action can be taken within 1 hour to isolate the RO system from the RWST. The RO system waste stream losses will be monitored throughout RO system operation.

Potential boron dilution of the RWST inventory during tank processing through the RWP system is prevented by administratively maintaining closed all manual boundary valves within the RWP system while the RWP system is connected to the RWST. The

RO system is designed to maintain a high boron recovery rate, which will be verified through testing prior to initial installation. Potential boron dilution during each batch operation of the RO system is prevented through verifying RWST boron margin prior to RO system operation and monitoring the RO system boron recovery rate by grab samples taken of the system inlet and outlet after each batch operation. Following each batch operation of the RO system, RWST mixing and sampling will be performed to verify the RWST boron concentration, and boron additions to the RWST will be made accordingly. These measures will ensure the TS minimum RWST boron concentration is available to mitigate the short term consequences of a small break LOCA, large break LOCA, or main steam line break accident.

Therefore, the change does not involve a significant reduction in a margin of safety as defined in the basis for any technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

Date of amendment requests: June 2, 2000.

Description of amendment requests: The proposed amendment would revise Technical Specification (TS) 3.5.2, ''ECCS—Operating,'' Action A, to change the allowed completion time for repair or replacement of the centrifugal charging pump (CCP) 2–1 during Cycle 10 of Unit 2 from 72 hours to 7 days. In response to high CCP 2–1 vibration, planning has been done for replacing the CCP 2–1 discharge head and bearing housing or to change out the entire CCP 2–1. The 72-hour allowed completion time is not sufficient to accomplish such emergent repairs on an inoperable CCP.

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 emergency core cooling system (ECCS) and the centrifugal charging pumps (CCPs) are designed to respond to mitigate the consequences of an accident. They are not an accident initiator, and as such cannot increase the probability of an accident.

The loss of both CCPs, due to an inoperable CCP 2–1 and a single failure of CCP 2–2, could increase the consequences of an accident. A PRA was performed to evaluate the increased consequences. The worst case risk increment due to the increased completion time for CCP 2–1 and the maximum allowed out of service time is 2.5 percent. This is a non-significant risk increase for core damage frequency (CDF). Also, there is no noticeable increase in the large early release frequency as a result of this request.

Allowing 7 days to complete the repairs and post-maintenance testing of CCP 2–1 is acceptable since the ECCS system remains capable of performing its intended function of providing at least the minimum flow assumed in the accident analyses. During the extended maintenance and test period, appropriate compensatory measures will be implemented to restrict high risk activity. The consequences of accidents, which rely on the ECCS system, will not be significantly affected.

Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no new failure modes or mechanisms created due to plant operation for an extended period to perform repairs and post-maintenance testing of CCP 2–1. Extended operation with an inoperable CCP does not involve any modification in the operational limits or physical design of the systems. There are no new accident precursors generated due to the extended allowed completion time.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Plant operation for 7 days with an inoperable CCP 2–1 does not adversely affect the margin of safety. During the extended allowable completion time the ECCS system maintains the ability to perform its safety function of providing at least the minimum flow assumed in the accident analyses. During the extended maintenance and test period, appropriate compensatory measures will be implemented to restrict high risk activity.

Therefore, the change does not involve a significant reduction in a margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PECO Energy Company, Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: May 15, 2000.

Description of amendment request: The proposed change is to LGS Unit 1 Technical Specifications (TSs) Figure 3.4.6.1–1, ''Minimum Reactor Vessel Metal Temperature vs. Reactor Vessel Pressure,'' and associated changes to TS Bases Section 3/4.4.6. The proposed change revises the pressure-temperature (P–T) limits by revising the heatup, cooldown and inservice test limitations for the Reactor Pressure Vessel (RPV) of Unit 1 from 12 effective full power years (EFPY) to a maximum of 32 EFPY. The proposed change also eliminates the requirement to maintain reactor coolant system within a narrow temperature band less that 212 °F during pressure testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no physical changes to the plant being introduced by the proposed changes to the P–T curves. The proposed changes do not modify the reactor coolant pressure boundary, *i.e.,* there are no changes in operating pressure, materials or seismic loading. The proposed changes do not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the control of radiological consequences is affected. The proposed P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section XI, Appendix G, in conjunction with ASME Code Cases N–640 and N–588. The proposed P–T curves were established in compliance with the methodology used to calculate the

predicted irradiation effects on vessel beltline materials. Usage of these procedures provides compliance with the intent of 10 CFR Part 50, Appendix G, and provides margins of safety that ensure that failure of the reactor vessel will not occur. The proposed P–T curves prohibit operational conditions in which brittle fracture of reactor vessel materials is possible. Consequently, the primary coolant pressure boundary integrity will be maintained. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, and ASME B&PV Code, Section XI, Appendix G, in conjunction with ASME Code Cases N–640 and N–588. Compliance with the proposed P–T curves will ensure that conditions in which brittle fracture of primary coolant pressure boundary materials are possible will be avoided. No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Further, the proposed changes to the P–T curves do not affect any activities or equipment, and are not assumed in any safety analysis to initiate any accident sequence. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes reflect an update of the P–T curves to extend the reactor pressure vessel operating limit to 32 Effective Power Years (EFPY). The revised curves are based on the latest ASME guidance. These proposed changes maintain the relative margin of safety commensurate with that which existed at the time that the ASME B&PV Code, Section XI, Appendix G, was approved in 1974. The revised pressure-temperature limits, although less restrictive than the current limits, were established in accordance with current regulations and the latest ASME Code information. Because operation will be within these limits, the reactor vessel materials will continue to behave in a non-brittle manner, thus preserving the original safety design bases. No plant safety limits, set points, or design parameters are adversely affected by the proposed TS changes. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

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.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Units Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 15, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) requirements to test the remaining diesel generators when (1) One of the two independent off-site power sources is inoperable as delineated in TS 3/4.8.1, Action a, and (2) a diesel generator is inoperable for other than preventative maintenance reasons as delineated in TS 3/4.8.1, Action b.

The proposed change also (1) Expands the diesel generator loading band for the monthly, six-month, and the two hour loaded pre-requisite requirement for the hot restart test in accordance with the guidance of Regulatory Guide 1.9, ''Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants,'' Rev. 3, 1993; and (2) corrects an administrative error in a note associated with TS 3.8.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The emergency diesel generator system is not an accident initiator. Eliminating the requirement to demonstrate that the operable diesel generators function properly, when there is no evidence that the inoperability of the affected diesel generator is the result of a potential common mode failure, will not increase the probability or the consequences of previously evaluated accidents, which rely upon emergency power supplies.

Eliminating the testing of the diesel generators whenever a single off-site power source is inoperable does not establish operability of the remaining off-site power source. Operability is determined by the performance of surveillance 4.8.1.1.1.1.a.

Elimination of unnecessary starts (challenges) to the diesel generators will result in increased equipment reliability and hence improved overall reliability for emergency onsite power supplies, as follows:

(A) Reduce the overall engine degradation resulting from wear and tear of testing and reduce the probability of failure due to engine degradation, and,

(B) Minimize the number of entries into an equipment configuration where a potential challenge to the safety function exists during the period of the tests.

Expanding the band from 2500–2600 KW to 2330–2600 KW to accommodate instrument inaccuracy does not change any design parameter. The diesel generator will still be fully loaded (90% to 100% of continuous rating) in accordance with Reg. Guide 1.9, Rev. 3, Section 2.2.2. The full capability of the diesel generator to carry its load will continue to be demonstrated during the 24 endurance run, which is unaffected by this request.

The proposed change to the note in TS 3.8.1.2 is a correction of an administrative oversight (renumbering of a surveillance requirement) and does not change the surveillance content or intent.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does not create the possibility of a new or different kind of accident from any accident previously analyzed.*

Eliminating the requirement to demonstrate that the operable diesel generators function properly affects testing requirements only and does not alter the physical configuration of the plant, replace or modify existing equipment, affect operating practices or create any new or different accident precursors.

Similarly, expanding the band from 2500–2600 KW to 2330–2600 KW to accommodate instrument inaccuracy does not change the manner in which the diesel generator is operated, or introduces any new or different failure from any previously evaluated.

The proposed change to the note in TS 3.8.1.2 is a correction of an administrative oversight (renumbering of a surveillance requirement) and does not change the surveillance content or intent.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. *Does not involve a significant reduction in a margin of safety.*

Eliminating the testing of the diesel generators whenever a single off-site power source is inoperable does not establish operability of the remaining off-site power source. Operability of the remaining off-site power source is determined by the performance of surveillance 4.8.1.1.1.1.a. The normally performed monthly surveillance ensures the diesel will be available to perform their safety function.

Eliminating the requirement to demonstrate that the operable diesel

generators function properly, when there is no evidence that the inoperability of the affected diesel generator is the result of a potential common mode failure, does not reduce the margin of safety. If the evaluation is inconclusive or determines that a cause of inoperability for a diesel generator is a potential common mode failure then operability testing will be conducted for the remaining operable diesels. This action will assure that the initial assumption of two independent power supplies, utilized in the accident analysis, remain valid.

The proposed changes do not adversely affect the ability of the diesels to operate when called upon. Rather, these changes should result in improved overall reliability of the diesels and therefore the margin of safety is preserved for those events in which there is a dependence upon on-site AC power supplies.

Expanding the band from 2500–2600 KW to 2330–2600 KW to accommodate instrument inaccuracy does not introduce any new or different failure from any previously evaluated or changes the manner in which the diesel generator is operated. Expanding the band does not change any instrumentation set point, or changes to the auto loading sequence of the diesel. The capability of the diesel to be loaded to its manufactured maximum ratings will continue to be demonstrated during the performance of the diesel endurance run, which is unaffected by this request.

The proposed change to the note in TS 3.8.1.2 is a correction of an administrative oversight (renumbering of a surveillance requirement) and does not change the surveillance content or intent.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 25, 2000.

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station, Units 1 and 2, Technical Specifications, Limiting Condition for Operation (LCO) 3.9.4, ''Containment Penetrations,'' to allow certain containment penetrations to be open during refueling activities under appropriate administrative controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?*

Response: No.

The proposed change to Technical Specification (TS) 3.9.4, ''Containment Penetrations,'' would allow certain containment penetration flow paths to be open during core alterations and movement of irradiated fuel within containment under specific administrative controls. The fuel handling accident [(FHA)] radiological analysis does not take credit for containment isolation or filtration. Therefore, the time required to close any open penetrations is not relevant to the confirmatory radiological analysis dose calculations and the proposed change does not involve a significant increase in the consequences of an accident previously evaluated. The proposed administrative controls for containment penetrations are conservative even though not required by the accident analysis.

The status of the penetration flow paths during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Because the FHA outside containment remains the limiting accident and the probability of a accident is not affected by the status of the penetration flow paths, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?*

Response: No.

The open containment penetration flow paths are not accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to open the containment penetrations during refueling operations will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created. Therefore, the proposed revision will not create a new or different kind of accident from any accident previously evaluated.

3. *Does the proposed change involve a significant reduction in a margin of safety?*

Response: No.

Technical Specification LCO 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during core alterations or fuel handling activities are minimized. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the containment penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because the limiting FHA is not changed. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the containment to the outside environment. Under the proposed TS change, the provisions to promptly isolate open penetration flow paths provide assurance that the offsite dose consequences of a FHA inside containment will be minimized. Therefore, the proposed change to the Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Section Chief: Robert A. Gramm

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 23, 2000.

Description of amendment request: The proposed amendment would revise Limiting Condition for Operation (LCO) 3.9.4, ''Containment Penetrations,'' of the technical specifications (TS) to allow certain containment penetrations to be open during refueling operations under administrative controls. The amendment would (1) Revise the note in the LCO for containment penetrations that may be open under administrative controls, deleting the reference to penetrations P–63 and P–98, and (2) delete the exception for penetrations P–63 and P–98 in Surveillance Requirement (SR) 3.9.4.1. In addition, there would be format and editorial corrections to TS 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Start Air,'' and TS 5.2.2.b, ''Administrative Controls,'' to remove errors in the conversion to improved TSs issued March 31, 1999, in Amendment No. 123. There are also changes to the TS Bases for the proposed changes to LCO 3.9.4 and SR 3.9.4.1.

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 status of the penetration flow paths during refueling operations has no [effect] on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a FHA [fuel handling accident] inside containment with open penetration flow paths are bounded by the current analysis described in the USAR [updated safety analysis report for Wolf Creek] and the probability of an accident is not affected by the status of the penetration flow paths, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The open containment penetration flow paths are not accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to open the containment penetrations during refueling operations will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements [in] the technical specifications.

Therefore, the proposed revision will not create a new or different kind of accident from any accident previously evaluated.

3. *The proposed change does not involve a significant reduction in a margin of safety.*

Technical Specification LCO 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during core alterations or fuel handling activities are minimized. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the containment penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because the limiting FHA is not changed. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the containment to the outside environment. Under the proposed TS change, the provisions to promptly isolate open penetration flow paths provide assurance that the offsite dose consequences of a FHA inside containment will be minimized.

The proposed changes to correct editorial/format errors involve corrections to the technical specifications that are associated with the original conversion application and supplements or the certified copy of the improved Technical Specifications. As such, these changes are considered as administrative changes and do not modify, add, delete, or relocate any technical requirements in the technical specifications.

Therefore, the proposed changes to the Technical Specifications 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.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

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.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: May 22, 2000.

Description of amendment request: The proposed amendment would add new Technical Specifications (TSs) 3.7.2.a(ii) and 3.7.2.h to address voltage on the 230 kV (kilovolt) grid as a precondition of criticality and to provide a time limit for when the 230 kV grid voltage is found to be insufficient to support Loss-of-Coolant Accident (LOCA) electrical loading during power operation. The application also requests various minor editorial changes. The Bases have also been changed to reflect the addition of the two new TS and to provide clarification of the components to which surveillance is applicable.

Date of publication of individual notice in ***Federal Register:*** June 2, 2000 (65 FR 35404).

Expiration date of individual notice: July 3, 2000.

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 electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: May 4, 2000, as supplemented May 9, 2000.

Brief description of amendment: The amendment revises Technical Specification (TS) 4.12.1.3, for the control building automatic isolation and recirculation dampers to remove the individual damper component tag numbers. The surveillance requirements do not change. The associated Bases is also changed to reflect the applicable section of the Updated Final Safety Analysis Report.

Date of issuance: June 29, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 223.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 22, 2000 (65 FR 32132).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2000.

No significant hazards consideration comments received: No.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 19, 1999, as supplemented April 21, 2000.

Brief description of amendments: The amendments approved changes in the Updated Final Safety Analysis Report (UFSAR) that constitute an unreviewed safety question as described in 10 CFR 50.59. These changes increase the probability of occurrence of a malfunction. These changes were not previously evaluated in the UFSAR, specifically, Section 5.3.1, ''External Missiles'' of the UFSAR did not address the probability of a missile from Unit 1 turbine-generator striking: (1) The refueling water tanks, (2) the No. 11 fuel oil storage tank, and (3) the plant equipment through various roof slabs or through non-missile-proof openings in the missile-proofing walls. The UFSAR only discusses a turbine missile strikingthe containment, control room, switchgear room, and waste processing area. The amendment authorizes the licensee to revise the turbine missile analysis to include the additional targets.

Date of issuance: June 19, 2000.

Effective date: As of the date of issuance to be implemented by December 31, 2000.

Amendment Nos.: 236 and 210.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70079).

The April 21, 2000, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated June 19, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Inc., Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Station, Units 1 and 2, Buchanan, New York.

Date of amendment request: February 14, 2000.

Brief description of amendments: The amendments would eliminate from Environmental Technical Specifications Section 5.4.1, Routine Reports, the discussion regarding Section 4.2. Specifically, the proposed change seeks to delete the reference to and discussion about Section 4.2, which was deleted as part of Amendment No. 90 to Operating License No. DPR–26.

Date of issuance: June 8, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 47 to DPR–5, and 210 to DPR–26.

Facility Operating License Nos. DPR–5 and DPR–26: The amendments revised the Environmental Technical Specifications.

Date of initial notice in ***Federal Register:*** April 5, 2000 (65 FR 17912). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: April 13, 2000, as supplemented by letter dated May 30, 2000.

Brief description of amendments: The amendments revise the Technical Specifications and associated Bases pages to accommodate the use of Mark-B11 fuel with M5 cladding.

Date of Issuance: June 21, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 313, 313, and 313.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 17, 2000 (65 FR 31356).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 2000.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of application for amendment: July 29, 1999.

Brief description of amendment: The amendment revised Surveillance Requirement 3.5.2.2. The change requires maintaining a higher level in the condensate storage tanks.

Date of issuance: June 20, 2000.

Effective date: June 20, 2000, to be implemented within 30 days from the date of issuance.

Amendment No.: 165.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 25, 1999 (64 FR 46431).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: November 1, 1999, as supplemented by letter dated May 10, 2000.

Brief description of amendment: This amendment revised the frequency of performing Technical Specification Surveillance Requirement (SR) 3.6.1.7.4, verification that each containment spray nozzle is unobstructed. The frequency

for performing SR 3.6.1.7.4 has been changed from once every 10 years to conditions following maintenance which could result in nozzle blockage.

Date of issuance: June 29, 2000.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 113.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70088).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2000.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: July 7, 1999.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to change the component surveillance frequencies for the following TSs to indicate a frequency of once per 3 months: Core Spray System TS 4.4.A.1 and 4.4.A.2, Containment Cooling System TS 4.4.C.1, Emergency Service Water System TS 4.4.D.1, Fire Protection System TS 4.4.F (isolation valves only), and Pressure Suppression Chamber—Drywell Vacuum Breakers TS 4.5.F.5.a. The TSs currently stipulate a component surveillance frequency of once per month. Also, the amendment revised TS pages 4.4–1 and 4.4–2 to incorporate editorial format changes and TS page 4.4–3 to accommodate the expanded text.

Date of Issuance: June 26, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 210.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications. Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56531).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 26, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 29, 1999.

Description of amendment request: The amendment relocates Surveillance Requirement 4.8.1.1.2f.1 which requires inspection of the Emergency Diesel Generator (EDGs) at least once per 18 months in accordance with procedures prepared in conjunction with its manufacturer from the Technical Specifications to the Seabrook Station Technical Requirements Manual.

Date of issuance: June 16, 2000.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 71.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 30, 1999, as supplemented on April 28, 2000.

Description of amendment request: The amendment revises the Technical Specifications (TSs) by: (1) Inclusion of a new Administrative Control TS 6.7.6i for establishing, implementing, and maintaining a Diesel Fuel Oil Testing Program for testing new and stored fuel oil; (2) relocation of current surveillance requirement (SR) 4.8.1.1.2d and SR 4.8.1.1.2e.1, containing SRs for fuel oil sampling and testing, to the Diesel Fuel Oil Testing Program in the Seabrook Station Technical Requirements (SSTR) Manual; (3) revision of SR 4.8.1.1.2d to reference the Diesel Fuel Oil Testing Program as a surveillance requirement; (4) inclusion of additional surveillance requirements to SR 4.8.1.2 for checking and removing accumulated water from the day and storage fuel oil tanks, verifying new and stored fuel oil properties and visually inspecting diesel generator exhaust leakage when the plant remains in Modes 5 and 6 of operation; (5) relocation to the Diesel Fuel Oil Testing Program SR 4.8.1.12h for cleaning diesel fuel storage tanks at a 10-year frequency to the SSTR Manual; and (6) revision of TS Bases 3/4.8.1 by adding a statement that the exceptions to the certain Regulatory Guides are specified in the plant's Updated Final Safety Analysis Report.

Date of issuance: June 27, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 73.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 17, 2000 (65 FR 31358).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 14, 2000.

Description of amendment request: This amendment revises the Technical Specifications by relocating Sections 3/4.9.5, ''Communications'', 3/4.9.6, ''Refueling Machine'', and 3/4.9.7, ''Crane Travel—Spent Fuel Storage Areas'' to the Seabrook Station Technical Requirement Manual.

Date of issuance: June 23, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 72.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 17, 2000 (65 FR 31358).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 2000.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 16, 2000, as supplemented by letters dated April 11, April 19, June 2, and June 9, 2000.

Brief description of amendments: The amendments revise several sections of the improved Technical Specification (ITS) to correct 19 editorial errors made in either (1) the application dated June 2, 1997, (and supplemental letters) for the ITSs, or (2) the certified copy of the ITSs that was submitted in the licensee's letters of May 19 and 27, 1999. The proposed amendment would

also revise 10 instances of incorrect incorporation of the CTS into the ITS. One of the proposed editorial errors and one of the incorrect incorporations of the CTS will be addressed in a future letter. The ITSs were issued as License Amendments 135 and 135 dated May 28, 1999.

Date of issuance: June 21, 2000.

Effective date: June 21, 2000, to be implemented by June 30, 2000.

Amendment Nos.: Unit 1–142; Unit 2–142

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 19, 2000 (65 FR 21032).

The April 19, June 2, and June 9, 2000, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 27, 1999, as supplemented April 11, 2000.

Brief description of amendment: This amendment revises Technical Specifications (TSs) 4.6.2.2.b, ''Suppression Pool Spray,'' and 4.6.2.3.b, ''Suppression Pool Cooling,'' to modify the acceptance criteria associated with flow rate testing of the Residual Heat Removal system pumps.

Date of issuance: June 16, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 128.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4289)

The April 11, 2000, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 5, 1999, as supplemented December 3, 1999.

Brief description of amendment: The amendment revises the applicability for the reactor power distribution limits and Average Power Range Monitor gain adjustments. The applicability is revised to operation at ≥ 25% Rated Thermal Power.

Date of Issuance: June 21, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 188.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73102)

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 21, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 19, 2000.

Brief description of amendments: These amendments revise Technical Specification 15.4.4–II.A to clarify that a different primary containment tendon may be designated a control tendon providing that the new control tendon has not previously been physically changed (*e.g.*, retensioned).

Date of issuance: June 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 196 and 201.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12295).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 2000.

No significant hazards consideration comments received: No.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: October 27, 1998, as supplemented on February 23, 2000.

Brief description of amendment: The amendment revises the plugging limits specified in TS 4.2.b, ''Steam Generator Tubes,'' for the Westinghouse hybrid-expansion-joint sleeve and the Westinghouse laser-welded sleeve. The proposed amendment also revises the list of applicable references specified in TS 4.2.b.

Date of issuance: June 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 148.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 18, 1998 (63 FR 64126). The February 23, 2000, supplement is within the scope of the original notice and does not change the proposed no significant hazards consideration finding.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2000.

No significant hazards consideration comments received: No.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 17, 1999, as supplemented April 23, July 21, and November 2, 1999, and March 6, 2000.

Brief description of amendment: The amendment revises Technical Specification Section 6.0, Administrative Controls, by consolidating management positions and modifying review and audit functions.

Date of issuance: June 20, 2000.

Effective date: June 20, 2000.

Amendment No.: 154.

Facility Operating License No. DPR–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 7, 1999 (64 FR 17033) The April 23, July 21, and November 2, 1999, and March 6, 2000, letters provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of July 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17625 Filed 7–11–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24553; 812–11908]

The Pitcairn Trust Company, et al.; Notice of Application

July 6, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain common and collective trust funds, certain individual trust accounts and certain limited partnerships to transfer their assets to certain series of a registered open-end management investment company in exchange for shares of the series.

APPLICANTS: The Pitcairn Trust Company (''PTC''), Pitcairn Funds (the ''Trust''), Diversified Value Fund, Diversified Growth Fund, Select Value Fund, Select Growth Fund, Small Cap Value Fund, Small Cap Growth Fund, Tax Exempt Bond Fund, Family Heritage Fund and International Equity Fund (collectively, the ''Common Trust Funds''), Employee Benefit Large-Capitalization Fund, Employee Benefit Mid-Capitalization Fund, Employee Benefit Small-Capitalization Fund, Employee Benefit Fixed Income Fund and Employee Benefit International Equity Fund (collectively, the ''Collective Trust Funds,'' together with the Common Trust Funds, the ''CTFs''). Collectively, PTC, the Trust and the CTFs are referred to as ''Applicants.''

FILING DATES: The application was filed on December 23, 1999 and amended on June 29, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 27, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o One Pitcairn Place, 165 Township Line Road, Suite 3000, Jenkintown, PA 19046.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware trust, will be registered under the Act as an open-end management investment company and will offer a number of series (each a ''Fund'') to the public, each with separate investment objectives, policies, and restrictions. PTC will serve as investment adviser to each Fund.[1]

2. PTC is a wholly-owned subsidiary of Pitcairn Company, which is wholly-owned by Pitcairn Group L.P. (''PGLP''), a limited partnership. PGLP's limited partnership units are owned by approximately 85 adult Pitcairn family members and related trusts, trusts governed by the Uniform Transfers to Minors Act, foundations and religious organizations supported by the Pitcairn family. For some of these family members, the beneficial ownership interests in PGLP partnership units are in excess of 5% of total units outstanding, both in terms of economic interest and voting power. Pitcairn family members also beneficially own, primarily through trusts, approximately 63% of the interests in the Common Trust Funds. A number of Pitcairn family members serve as co-trustees for trusts with, in the aggregate, more than 5% of the total beneficial interests in one or more common Trust Funds. Certain employee benefit plans maintained for the benefit of employees of PTC and its affiliates, including three members of the Pitcairn family who are employees of PTC (''PTC Plans''), own 70%–85% of the assets of the Collective Trust Funds.

3. Each CFT is maintained by PTC and is either (i) a ''common trust fund'' as defined in section 584(a) of the Internal Revenue Code of 1986, as amended (''Code''), or (ii) a collective trust fund that meets the requirements of section 401 of the Code. The CTFs are excluded from the definition of ''investment company'' under sections 3(c)(3) (for the Common Trust Funds) and 3(c)(11) (for the Collective Trust Funds) of the Act. Participants in the CFTs are persons or entities for which PTC acts as either trustee, executor, administrator, guardian, or custodian (''Participants''). Pitcairn company serves as the general partner of certain limited partnerships (''Partnerships''), the units of which are beneficially owned by clients of PTC. PTC serves as trustee for certain individual trust accounts (''ITAs'') that are held by PTC as sole or co-trustee for the benefit of individual clients, none of which is a Pitcairn family member or an entity in which a Pitcairn family member has a pecuniary interest.

4. Applicants propose to transfer in-kind all of the assets of each CFT, ITA and Partnership to one of the Funds with generally similar investment objectives in exchange for Class I shares of the respective Fund having an aggregate net asset value equal to that of the assets transferred (the ''Conversions'').[2] Class I shares will not be subject to a front-end or contingent deferred sales charge, redemption fees or rule 12b–1 distribution fees, although there may be a shareholder service fee of 0.25%. The assets of the CFTs to be transferred will be valued in accordance with the provisions of rule 17a–7(b) under the Act, and the shares of the Funds issued will have an aggregate net asset value equal to the value of the assets transferred. The shares of the

[1] As a ''bank'' within the meaning of section 202(a)(2) of the Investment Advisers Act of 1940 (''Advisers Act''), PTC currently is not subject to the registration requirements of the Advisers Act.

[2] Applicants also request relief for future transactions in which the assets of a terminating common or collective trust fund maintained by PTC are exchanged for shares of a registered open-end management investment company, or a series thereof, advised by PTC, or any entity controlling, controlled by, or under common control with PTC when owners of PTC or the PTC Plans own 5% or more of such trust fund or such registered investment company, or series thereof (''Future Transactions''). Applicants state that they will rely on the requested relief for Future Transactions only in accordance with the terms and conditions contained in the application.

Funds issued to the CTFs will be credited to the account of each Participant, *pro rata,* according to the Participant's interest in the relevant CTF owned immediately prior to the Conversions. Following the Conversions, the CTFs will be terminated and the Fund shares will be held by PTC (together with any co-trustees). In addition, the Partnerships will terminate at the time of their Conversions. The Conversions of the CTFs are scheduled to occur on or before August 11, 2000. The Conversions of the Partnerships and ITAs will occur approximately one week before the Conversion of the CTFs. PTC will pay all expenses incurred in connection with the Conversions.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling, or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (c) if the other person is an investment company, any investment adviser of that company. Applicants state that, because the CTFs may be viewed as acting as principal in the Conversions, and because the CTFs and the Funds may be viewed as being under the common control of PTC, within the meaning of section 2(a)(3)(C) of the Act, the Conversions may be subject to the prohibitions of section 17(a) of the Act.

2. Rule 17a–7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the securities. Applicants state that rule 17a–7 may not be available for the conversions because, among other affiliations, the owners of PTC beneficially own more than one half the interests in the Common Trusts Funds, and the PTC Plans own 70–85% of the assets of the Collective Trust Funds. Thus, Applicants may not meet the sole affiliation requirement of rule 17a–7. In addition, Applicants state that the Conversions are to be effected as in-kind transfers, rather than in cash.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that certain conditions are satisfied. Applicants state that rule 17a–8 may not be available for the Conversions because the CTFs are not registered investment companies. In addition, Applicants state that the CTFS, ITAs, Partnerships and the Funds may be deemed to be affiliated for reasons other than those covered by rule 17a–8.

4. Section 17(b) of the Act provides that the Commission may exempt a proposed transaction from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants request an order under section 17(b) of the Act to permit the Conversions and under sections 6(c) and 17(b) to permit the Future Transactions. Applicants submit that the Conversions satisfy the standards for relief under sections 6(c) and 17(b) of the Act. Applicants state that the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will adopt procedures pursuant to which the Conversions may be effected in accordance with rule 17a–7(e), and that the provisions of rule 17a–7(b), (c), (d) and (f) will be satisfied. The Conversions will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Funds in the Conversions is in the best interests of each Fund and that the interests of existing shareholders of each of the Funds will not be diluted as a result of the Conversions. These findings, and the basis upon which they will be made, will be fully recorded in the minute books of the Trust. In addition, before the Conversions are entered into, PTC will have determined in accordance with its fiduciary duties that the conversions are in the best interest of the ITAs and the Partnerships and the beneficial owners thereof.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Conversions will comply with the terms of rule 17a–7(b) through (f).

2. The Conversions will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Funds in the Conversions is in the best interests of each Fund and that the interests of existing shareholders of such Fund will not be diluted as a result of the Conversions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Trust.

3. The Conversions will not occur unless and until (a) PTC, as trustee and fiduciary of each CTF and the Participants therein, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of Participants in each of the CTFs, and (b) PTC, as fiduciary of each ITA and Partnership, has determined in accordance with its fiduciary duties that the Conversions are in the best interests of each ITA or Partnership and its beneficial owners.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17594 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43004; File No. SR–CBOE–98–54]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 3, 4, 5 and 6 to the Proposed Rule Change Relating to Designated Primary Market Makers

June 30, 2000.

I. Introduction

On December 22, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') 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 update and reorganize its rules concerning designated primary market makers (''DPMs''). On February 18, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on May 3, 1999.[4]

On May 11, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On September 29, 1999, the Exchange submitted Amendment No. 3 to the proposed rule change.[6] On December 21, 1999, the Exchange submitted Amendment No. 4 to the proposed rule change.[7] On February 23, 2000, the Exchange submitted Amendment No. 5 to the proposed rule change.[8] Finally, on May 25, 2000, the Exchange submitted Amendment No. 6 to the proposed rule change.[9]

The Commission received two comment letters on the proposal.[10] This order approves the proposed rule change, as amended by Amendment No. 1, and approves Amendment Nos. 2, 3, 4, 5, and 6 to the proposed rule change on an accelerated basis. The Commission is also soliciting comment on Amendment Nos. 2, 3, 4, 5 and 6 to the proposed rule change from interested persons.

II. Background

The Exchange's DPM program began as a pilot program in 1987 with 4 DPMs that were allocated a total of 11 equity option classes. In 1994, the Commission approved the DPM program on a permanent basis.[11] Since its introduction, the DPM program has grown significantly. In June 1999, the members of the Exchange voted to expand the DPM program floor-wide to all equity options classes, as well as specified index options and structured products. According to the Exchange, currently there are 58 DPMs that have been allocated over 1400 options products.

Since its inception, the Exchange has developed procedures for implementing the rule provisions that govern the program. Currently, CBOE Rules 8.80 and 8.81 govern the DPM program. In this rule filing, the Exchange seeks to update these DPM rules to incorporate the various procedures that have been implemented pursuant to CBOE Rules 8.80 and 8.81 and to incorporate various proposed changes. In addition, the Exchange proposes to reorganize the rules by creating 12 separate rules that each address the 12 primary aspects of the DPM program.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly McCormick, Attorney, Division of Market Regulation (''Division''), SEC, dated February 11, 1999 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691.

[5] Letter from Arthur B. Reinstein, Assistant General counsel, CBOE, to Kelly McCormick, Attorney, Division, SEC, dated May 10, 1999 (''Amendment No. 2''). In Amendment No. 2, the CBOE made non-substantive, grammatical changes to the proposed rule change.

[6] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated September 28, 1999 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposed changes to propose Rule 8.82 regarding election procedures. These changes were made to conform proposed Rule 8.82 to changes proposed to be made to the Exchange's constitution. Specifically, Amendment No. 3 would change the date by which member petitions for the election of members of the Modified Trading System (''MTS'') Committee must be submitted and clarifies that petitions must be signed by 100 voting members. *See* Securities Exchange Act Release No. 42026 (October 18, 1999), 64 FR 57499 (October 25, 1999) (SR–CBOE–99–43).

[7] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated December 16, 1999 (''Amendment No. 4''). In Amendment No. 4, the Exchange proposes four changes to the proposed rule change. First, Amendment No. 4 proposed subparagraph (a)(viii) to proposed Rule 8.85 to provide that a DPM shall not initiate a transaction for its own account that would result in putting into effect any stop or stop limit order, which the DPM represents as agent, unless approved by a Floor Official and guaranteed by the DPM that the stop or stop limit order will be executed at the same price as the electing transaction.

Second, Amendment No. 4 deletes the portion of proposed Rule 8.85(b) that granted the MTS Committee the discretion to authorize a DPM to represent discretionary orders in unusual circumstances.

Third, Amendment No. 4 revises the Guidelines for Exemptive Relief under proposed Rule 8.91(e), which provides that the guidelines may be supplemented or modified by the Exchange in individual cases when the Exchange deems it appropriate. The provision would be amended to better define the Exchange's discretion to be limited to only allow the Exchange to supplement the guidelines in a manner that is consistent with the intent of the original requirements. *But see* Amendment No. 6 *infra,* note 9.

Fourth, Amendment No. 4 deletes the phrase ''approve an interim DPM'' and replaced it with ''approve a DPM on an interim basis'' in proposed Rule 8.83(f)(i), to clarify that a DPM appointed on an interim basis is subject to all of the DPM obligations.

[8] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated February 17, 2000 (''Amendment No. 5''). In Amendment No. 5, the CBOE confirms that any changes to the DPM financial guidelines proposed by the MTS Committee must be submitted to the Commission, pursuant to SEC Rule 19b–4.

[9] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated May 24, 2000 (''Amendment No. 6''). In Amendment No. 6, the Exchange proposes three changes to the rule filing. First, the Exchange proposes to add language to proposed Rule 8.85 (a)(viii) to make it consistent with the current language of CBOE Rule 8.80(c)(7).

Second, the Exchange proposes to delete paragraph (c)(iii) of proposed Rule 8.85 and adds language addressing the same issue to proposed rule 8.88. Therefore, proposed Rule 8.88 now states that the review of a DPM's operations and performance shall include, among other things, an evaluation of the extent to which a DPM has satisfied its obligations under proposed Rule 8.85 and has otherwise acted in ways reasonably designed to make the Exchange competitive with other markets that trade the same options allocated to the DPM, taking into account the Exchange's market share.

Third, the Exchange proposed to delete the proposed provision granting discretion to the Exchange under the Guidelines for Exemptive Relief under proposed Rule 8.91(e). As amended, the Exchange proposes to allow DPMs and members affiliated with DPMs to structure their corporate organizations in a manner so as to create a functional separation between the DPM and the affiliate, instead of the current requirement of separate and distinct organizations. All of the other requirements under the guidelines, however, remain intact.

Finally, in Amendment No. 6, the Exchange clarifies that any changes to the formula for determining the participation entitlement, pursuant to proposed Rule 8.87, must be submitted to the Commission, pursuant to SEC Rule 19b–4.

[10] Letter from James I. Gelbort, to Jonathan G. Katz, Secretary, SEC, dated May 21, 1999; letter from John L. Rushlie, to Kelly Riley, Attorney, Division, received on November 19, 1999.

[11] Securities Exchange Act Release No. 34999 (November 22, 1994), 59 FR 61361 (November 30, 1994) (File No. SR–CBOE–94–36).

[12] The Exchange filed a substantially similar proposed rule change with the Commission in 1998. *See* Securities Exchange Act Release No. 40041 (May 28, 1998), 63 FR 30525 (June 4, 1998) (''Original Proposal''). After the Original Proposal was submitted, however, the Exchange received a member petition concerning the transfer of DPM appointments. As a result of the member petition, the CBOE withdrew the Original Proposal. After the CBOE withdrew the Original Proposal, it engaged its members in a dialogue about DPM transferability by, among other things, holding membership meetings. The CBOE Board of Directors re-approved

III. Description of the Proposed Rule Change

A. Proposed Rule 8.80—DPM Defined

Proposed Rule 8.80 defines a DPM as a member organization that is approved by the Exchange to function as a market maker, floor broker, and order book official in allocated securities. Proposed Rule 8.80 also clarifies that the MTS Committee approves DPM appointments while the Exchange's Allocation Committee and Special Product Assignment Committee determines which securities will be allocated to each DPM.[13]

B. Proposed Rule 8.81—DPM Designees

Proposed Rule 8.81 sets forth the requirements applicable to DPM Designees. A DPM Designee is an individual approved by the MTS Committee to represent the DPM in its capacity as a DPM, Since a DPM, as defined in proposed Rule 8.80, must be a member organization, proposed Rule 8.81 provides that a DPM may only act through its DPM Designees.

C. Proposed Rule 8.82—MTS Committee

Proposed Rule 8.82 governs the composition of the MTS Committee. The proposal retains the current 11 members composition, which consists of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, four members whose primary business is as a market maker, two members whose primary business is as a market maker or as a DPM Designee, one member whose primary business is as a floor broker who is not associated with a member organization that conducts public customer business, and two persons associated with member organizations that conduct public customer business.

D. Proposed Rule 8.83—Approval To Act as a DPM

Proposed Rule 8.83 sets forth the criteria that may be considered by the MTS Committee when making DPM application decisions. Specifically, the MTS Committee may consider such factors as adequacy of capital, operational capacity, trading experience, regulatory history, and market performance. In addition, an applicant may present any other matter that it wishes the MTS Committee to consider in conjunction with the approval decision. As with most decisions of the MTS Committee, any applicant not approved by the MTS Committee to act as a DPM may appeal that decision to the Exchange's Appeals Committee, pursuant to Chapter XIX of the Exchange's Rules. The appeal procedures provide the right to a formal Appeals Committee hearing concerning any approval decision, and the decision of the Appeals Committee may be appealed to the Board of Directors, pursuant to CBOE Rule 19.5.

E. Proposed Rule 8.84—Conditions on the Allocation of Securities To DPMs

Proposed Rule 8.84 grants the MTS Committee new authority to establish (i) restrictions applicable to all DPMs regarding the concentration of securities allocable to a single DPM and to affiliated DPMs, and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied for a DPM to receive allocations of securities, including but not limited to, standards relating to adequacy of capital and number of personnel. If a DPM is not performing to the required level with the securities it has already been allocated, the MTS Committee may limit the DPM's eligibility to recieve additional securities.

F. Proposed Rule 8.85—DPM Obligations

Proposed Rule 8.85 establishes that each DPM, with respect to each of its allocated securities, must fulfill all of the obligations under Exchange Rule applicable to market makers, floor brokers, and order book officials. The proposed rule also sets forth the specific obligations of DPMs that are currently contained in CBOE Rule 8.80, some of which have been modified to clarify their scope.

For example, proposed Rule 8.85(a)(ix) restates the current requirement that the DPM is responsible for determining any formula used for generating automatically updated market quotes and for disclosing the elements of the formula (unless exempted as proprietary by the MTS Committee) to the trading crowd. Proposed Rule 8.85(a)(ix) provides the specific elements of the formula that must be disclosed, such as the option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying security.

Proposed Rule 8.85(b)(i) restates the current requirement that a DPM is obligated to place in the public order book any order in the DPM's possession that is eligible for entry, subject to two exceptions. First, proposed Rule 8.85(b)(i)(A) clarifies that a DPM is not obligated to place a book-eligible order in the book if the DPM immediately executes the order upon receipt. Second, proposed Rule 8.85(b)(ii)(B) provides that a DPM may refrain from placing a book-eligible order in the public order book if the customer who placed the order so requests, so long as the DPM announces the information concerning the order that would have been displayed had the order been placed in the public order book in public open outcry.

Proposed Rule 8.85(b)(ii) states that a DPM may not remove any order from the public order book except in two circumstances. First, proposed Rule 8.85(b)(ii) clarifies that a DPM may remove orders, which have been cancelled, executed, or have expired from the public order book. Second, proposed Rule 8.85(b)(ii) clarifies that a DPM may return an order to the number that placed the order upon such member's request.

In proposed Rule 8.85(b)(iii), the Exchange restates its current requirement that a DPM must accord priority to any order that the DPM represents as agent over the DPM's principal transactions. Proposed Rule 8.85(b)(iv) restates the current DPM prohibition that a DPM may not charge any brokerage commission for any order execution for which the DPM acted as both principal and agent. There is, however, an exception to this prohibition set forth in proposed Rule 8.85(b)(iv), if the customer consents.

Finally, proposed Rule 8.85(c)(vi) is a new provision that requires that each DPM segregate, in a manner prescribed by the MTS Committee, its DPM businesses and activities from its other non-DPM businesses and activities.

G. Proposed Rule 8.86—DPM Financial Requirements

Proposed Rule 8.86 sets forth the financial requirements for DPMs.

H. Proposed Rule 8.87—Participation Entitlement of DPMs

The Exchange proposes to formalize the authority of the MTS Committee to determine the participation entitlement for DPMs in proposed Rule 8.87.[14]

I. Proposed Rule 8.88—Review of DPM Operations and Performance

Proposed Rule 8.88(a) restates the current rule provision that the MTS Committee or a subcommittee thereof may conduct a review of a DPM's

a substantially similar proposed rule change, which was then presented to the CBOE members for a vote. The CBOE members approved the current proposed rule change on December 14, 1998.

[13] The Exchange's process for allocating securities to DPMs and market-maker trading crowds is set forth in CBOE Rule 8.95.

[14] Any changes to the formula established by the MTS Committee shall be submitted to the Commission, pursuant to SEC Rule 19b–4. *See* Amendment No. 6.

operations and performance at any time. In addition, proposed Rule 8.88(a) clarifies that a DPM and its associated persons are obligated to submit information requested by the MTS Committee relating to such a review. The proposed rule requires that each DPM be reviewed on an annual basis rather than a quarterly basis as is currently required. As part of the review, the MTS Committee will consider, among other things, whether a DPM has satisfied its obligations under proposed Rule 8.85.[15]

Proposed Rule 8.88(b) expands the market performance evaluation responsibilities of the MTS Committee by requiring it to perform market performance evaluations and remedial action functions for market makers and floor brokers that regularly trade at DPM stations. Proposed Rule 8.88(c) provides that members of the MTS Committee may perform the functions of a floor official at DPM trading stations.

J. Proposed Rule 8.89—Transfer of DPM Appointments

Under current CBOE Rule 8.80(b)(3), a DPM appointment may not be transferred without the approval of the MTS Committee. Proposed Rule 8.89 expands upon this provision by setting forth a detailed procedure to be followed by a DPM in the event it proposes to sell, transfer, or assign any of its interest. The proposed rule change also includes standards to be applied by the MTS Committee to determine whether or not to approve the transfer request.

K. Proposed Rule 8.90—Termination, Conditioning, or Limiting Approval To Act as a DPM

Proposed Rule 8.90 governs the MTS Committee's authority to terminate, condition, and limit the approval of a DPM. The proposed rule restates, with certain clarifications, provisions that are currently contained in CBOE Rule 8.80.

L. Proposed Rule 8.91—Limitations on Dealings of DPMs and Affiliated Persons of DPMs and Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated With DPMs

Proposed Rule 8.91 restates that rule provisions that are currently found in CBOE Rule 8.81, which restricts the dealings of DPMs and persons associated with DPMs.

The proposed Guidelines for Exemptive Relief set forth the steps that a member affiliated with a DPM must undertake to seek an exemption from the prohibitions found in proposed Rule 8.91 (a) through (c). The Guidelines provide specific requirements and procedures that affiliated members must establish to prevent, among other things, the use of material non-public corporate or market information that may be in the possession of the affiliated member from influencing the conduct of the DPM or to avoid the use of DPM market information to influence the affiliated member's conduct. The Exchange has proposed to allow DPMs and their affiliated members to structure their corporate organizations in such a manner as to create a functional separation, unlike the current rule, which requires that the DPM and its affiliate be actual separate and distinct organizations.[16]

M. Deletions from Current DPM Rules

The CBOE also proposes to delete several provisions of the current DPM rules.

IV. Summary of Comments and CBOE Response

The Commission received two comment letters on the proposed rule change.[17] The Exchange submitted written responses to the issues raised in each comment letter.[18] The issues raised by the commenters and the Exchange's response are summarized below.

First, Mr. Gelbort requested that the Exchange clarify the relationship between CBOE Regulatory Circular RG97–114, and the proposed rule change. In RG97–114, the commenter stated that the Exchange ''arguably expanded the scope of DPM responsibilities and obligations beyond those specifically enumerated in CBOE rules.''

The Exchange responded that it strongly disagreed with Mr. Gelbort's assertion that RG97–114 exceeded the provisions of the Exchange's rules. The Exchange stated that the regulatory circular merely restated various responsibilities and obligations of DPMs that were specifically set forth in the Exchange's rules. Furthermore, the Exchange stated that the regulatory circular merely provided an explanation regarding how these provisions apply to specific situations.

The Exchange stated that it intends to issue a new regulatory circular upon the effectiveness of this proposed rule change that will replace RG97–114. The new circular will contain updated rule references and will describe the updated rule provisions. The Exchange further stated that since RG97–114 will be superceded, there should be no confusion about the relationship between it and the new proposed rules.

Second, Mr. Gelbort stated that proposed Rule 8.85(a)(ix), which provides that the DPM has the obligation to determine the formula for generating automatically updated market quotes and to disclose the formula to members at the trading station, mandates continued DPM control over the sole system for setting quotes in a crowd and restricts the ability of most other market makers to adequately make independent markets.

The Exchange responded that the obligation set forth in proposed Rule 8.85(a)(ix) is a restatement of current Rule 8.80(c)(3). The Exchange stated that the proposal clarifies the components of the formula generated by the DPM for automatically updating market quotes that must be disclosed to the trading crowd. In addition, the proposal provides the MTS Committee with the discretion to allow a DPM to keep proprietary information about the formula confidential.

In response to Mr. Gelbort's statement that DPMs should not have control over these formulas, the Exchange responds that this would be antithetical to the nature and purpose of the DPM system. The Exchange states that the DPM system is a unitary specialist-type trading system and one of its primary objectives is to provide for the centralization of trading functions. The Exchange believes it is imperative that the DPM have control over the disseminated market quotations to be able to fulfill its DPM obligations. An integral part of controlling the DPM's disseminated quotes, CBOE argues, is the ability of the DPM to determine how automatically updated market quotes are generated.

Responding to Mr. Gelbort's assertion that this proposal would restrict the ability of other market makers to make an independent market, the Exchange stated that market makers will continue to have the ability to improve an automatically updated market quote through open outcry. The Exchange explained that CBOE quote reporters are assigned to each trading crowd to input market quotations verbalized by members of the crowd. Moreover, a DPM has the obligation to assure that disseminated market quotes are

[15] *See* Amendment No. 6, *supra* note 9. As set forth in Amendment No. 6, the MTS Committee will consider whether the DPM has acted in ways that are reasonably designed to make the Exchange competitive with other markets that trade the same securities by considering the Exchange's market share in those multiple-traded options.

[16] *See* Amendment No. 6, *supra* note 9.

[17] *See supra* note 10.

[18] *See* letters from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division, SEC, dated July 7, 1999 and February 17, 2000.

accurate, which includes assuring any market maker quote that improves the market is properly disseminated.

Third, Mr. Gelbort suggested that the last sentence of 8.85(a)(ix) could be read to relieve non-DPM market makers of certain market maker obligations while in the presence of a DPM. This sentence states that, in the event of inconsistency between specific DPM obligations in proposed Rule 8.85 and the general market maker obligations found under the market maker rules, the specific obligations applying to the DPM shall govern. The Exchange responded that it did not agree with the commenter's interpretation and stated that proposed Rule 8.85(a)(ix) does not, and will not be interpreted to, relieve market makers of any obligations under the Exchange's rules.

Finally, Mr. Gelbort suggested, in reference to proposed Rule 8.88(c), that MTS Committee members acting as floor officials or otherwise should be specifically precluded from intervening in any dispute that involves an affiliated member or co-employee.

The Exchange responded that current Exchange procedures already preclude such conflicts. The CBOE submitted Regulatory Circular RG96–81, which sets forth committee standards and procedures and specifically provides that a committee member should recuse himself from participation in any committee action if he believes that he may not be able to participate in a fair and impartial manner. In particular, if the committee member has a business relationship with an individual or entity that is the subject of a committee discussion or vote, member recusal would be appropriate. The Exchange believes that this regulatory circular specifically addresses the concerns raised by Mr. Gelbort.

In his comment letter, Mr. Rushlie raised two concerns with the proposed rule change. First, Mr. Rushlie asserted that he believed that the ''new'' DPM system would limit competition within each pit because non-DPM traders would be forced to ''go along with the DPM's markets'' or risk being cut out of trades. Second, Mr. Rushlie questioned the validity of the member vote taken to approve the proposed rule change. Specifically, he asserted that seat holders not present on the floor of the Exchange were not given the opportunity to vote on the proposal.

In response to Mr. Rushlie's comments, the Exchange first clarified that the DPM system is not new to the CBOE floor and that the proposal only seeks to reorganize and restructure the current rules applicable to DPMs. The Exchange strongly disagreed with Mr. Rushlie's first concern about market makers being forced to go along with DPMs or risk being cut out of trades. The Exchange stated that any action on the floor that would act to discourage a member from making competitive markets would be a serious rule violation. Further, the Exchange noted that Mr. Rushlie failed to identify any proposed rule that would restrict the ability of a market maker from competing with a DPM to improve DPM markets.

In response to Mr. Rushlie's comment that the vote was invalid because seat owners were not provided with the right to vote on the proposal, the Exchange cited CBOE Rule 8.95.03. This rule states that a trading crowd may decide that it no longer wishes to trade an options class that opened for trading prior to May 1, 1987. Pursuant to this rule, market makers and floor brokers that satisfy specified transaction requirements may vote. The rule, however, does not require that a member own a membership to be eligible to vote. Thus, according to the Exchange, the vote was held in a manner consistent with its rules.

Finally, the Exchange stated that Exchange members were given ample notice and opportunity to vote on the proposal before its submissions to the Commission and that members voted to approve the proposal.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission believes that the proposal is consistent with the requirements of Sections 6(b)(3)[20] and 6(b)(5)[21] of the Act. Section 6(b)(3) requires, among other things, that the rules of an exchange assure a fair representation of its members in the administration of its affairs.[22] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.[23] Moreover, Section 6(b)(5) requires that the rules of a national securities exchange be designed to not permit unfair discrimination between customers, issuers, brokers, or dealers.[24]

The CBOE's DPM program has been utilized for approximately 13 years. During this time, the program has successfully grown to include 58 DPMs that are allocated over 1400 options classes. The Commission is not aware of any substantial problems arising from the workings of the program and believes that the proposed rules approved today will help clarify and govern the DPM program.

As stated above, the Commission believes that the proposed rule change is consistent with Section 6(b)(3) of the Act.[25] Specifically, proposed Rule 8.82 provides members with the ability to nominate members of the MTS Committee, which is the committee that implements and monitors the DPM program. Further, members will now be able to vote for the candidates for this committee. Currently, the CBOE Board of Directors appoints members of the MTS Committee that are nominated by the CBOE Nominating Committee. By providing members with the opportunity to choose their representation on the MTS Committee, members will now have a voice and be actively involved in the policies and oversight of the DPM system.

The Commission finds that the proposed rules approved today promote just and equitable principles of trade consistent with Section 6(b)(5) of the Act[26] because they provide a cohesive set of rules governing the DPM trading program. For example, proposed Rule 8.85 sets forth an extensive list of obligations to be fulfilled by each DPM. Under this proposed rule, the DPM is required to fulfill all of the obligations under Exchange rules that are applicable to market makers, floor brokers, and order book officials. Proposed Rule 8.85 also sets forth specific DPM obligations, such as the manner in which the DPM must segregate its transactions and the manner in which it must disseminate automatically updated market quotes. These DPM obligations should ensure that the DPM maintains a fair and orderly market in its allocated securities.

The proposed rule also mandates how a DPM must handle customer limit orders and the priority that must be

[19] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(3).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(3).

[23] 15 U.S.C. 78f(b)(5).

[24] *Id.*

[25] 15 U.S.C. 78f(b)(3).

[26] 15 U.S.C. 78f(b)(5).

afforded to customer orders. Proposed Rule 8.85(b)(i) states that a DPM is required to place in the public order book any order in its possession that is book eligible (subject to two exceptions), while proposed Rule 8.85(b)(ii) requires that a DPM may not remove any order from the public order book, except in two specific circumstances.

One of the exceptions to proposed Rule 8.85(b)(i) states that a DPM is not required to place a book-eligible order in the public order book if the DPM executes the order immediately upon receipt. This exception should ensure investors that have marketable orders receive more timely executions by clarifying that the DPM is not required to first place the order in the public order book if it intends to immediately execute the book-eligible order. The second exception to proposed Rule 8.85(b)(i) allows a DPM to not place a book-eligible order in the public order book if the customer so requests. Upon receipt of such order, however, the DPM must announce the order in public outcry. This requirement should accommodate investors who desire a price improvement opportunity before execution, while also requiring that the order be disclosed to members of the trading crowd so that they are not at an informational disadvantage. These proposed changes should ensure that DPMs handle orders in a fair manner, which should, in turn, help to ensure liquidity and best execution of customer orders.

The Commission also finds that the proposed rules provide protection to investors and the public interest consistent with the requirements of Section 6(b)(5).[27] For example, the definition of the term, DPM, has been amended to allow only member organizations to become DPMs. This modification should ensure that each DPM has a formal organizational structure to govern the manner in which it operates, which should provide investors with a more stable and professional DPM program. In addition, this requirement should enhance the qualifications and abilities of DPMs on the Exchange floor.

The proposed rule change also deletes a provision that allowed DPM nominees, upon departure from the DPM, to request that the DPM's allocated securities be open to reallocation. By eliminating this requirement, the DPM program should have more continuity. Today, according to the Exchange, many DPMs are much larger and nominee turnover is more frequent. Therefore, the departure of nominees does not have the impact it once had and the current rule is no longer justified.

Investors' interests also are protected by the clarified role of the MTS Committee. For example, under proposed Rule. 8.81, the MTS Committee will now have the authority to limit the activities or require the supervision of DPM Designees. This requirement should provide an additional layer of supervision over inexperienced DPM Designees, which should ensure that customer orders are handled properly.

Moreover, the MTS Committee, pursuant to proposed Rule 8.83, must take into consideration many factors in determining whether to allow a member organization to act as a DPM. Such factors include the organization's adequacy of capital, operational capacity, trading experience, regulatory history, and market performance. These factors should ensure that those organizations approved to act as DPMs have the ability to perform successfully and competently. In addition, the MTS Committee will be required to review DPMs on an annual basis pursuant to proposed Rule 8.88. The MTS Committee will review each DPM's operations and performance to determine if the DPM is adequately performing its duties. Although the proposed rule change reduces the number of reviews from quarterly to annually, the annual review conducted by the MTS Committee should be more extensive. Moreover the MTS Committee will continue monitor DPMs throughout the year and address any problems or issues as they may arise.

Proposed Rule 8.86 and the accompanying proposed regulatory circular increase the financial requirements of DPMs. The Commission finds that the increased requirements should enhance investor protections by ensuring that DPMs have sufficient capital to maintain an orderly market for its allocated securities.

Further, the proposal to delegate specific oversight authority to other appropriate Exchange committees should enhance the fair and consistent application of the CBOE's rules and policies for all members. While all Exchange members have be held to the same standards, those standards will now be interpreted and applied by a single committee in a more consistent fashion.

The Commission finds that the transfer rules set forth in proposed Rule 8.89 generally protect the public interest because it provides a detailed procedure that must be followed in the event of a sale, transfer, or assignment of any ownership interest or any change in its capital structure. Because the Exchange has an interest in approving transfers to ensure that its members are qualified and able to execute their obligations, the Commission finds that the proposed rule to be consistent with the Act.

Finally, proposed Rule 8.91 should ensure that DPMs are not involved in inappropriate conflicts of interest, which could potentially harm investors and the integrity of the Exchange. The proposed guidelines for exemptive relief allow DPMs to be affiliated with other persons or entities so long as procedures are established to restrict any improper flow of material, non-public information. The CBOE has proposed to require that a DPM and its affiliates be functionally separate entities, rather than specifically separate organizations, as currently required. The functional separation must include appropriate procedures to restrict the flow of material, non-public information. Thus, a DPM must establish an information barrier between its DPM activities and its affiliate's business activities.

The Commission believes that this proposed structure is consistent with Section 6(b)(5) of the Act[28] because it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The CBOE guidelines have been drafted to prevent inappropriate use of non-public information by DPMs and their affiliates that could result in market manipulation. The Commission expects the CBOE to continue to monitor DPMs and their affiliates to ensure that their corporate structures and information barriers continue to satisfy these goals.

The Commission also finds that the proposed rule change is consistent with the requirements of the Act because it clearly sets forth the obligations of DPMs. The Exchange has added new rules, which should provide DPMs with adequate notice of the obligations and duties expected by the Exchange and the procedures and ramifications for failing to adequately comply with such obligations and duties.

The Exchange also proposed to delete paragraph (c)(iii) of proposed Rule 8.85 and added language addressing the same issue to proposed Rule 8.88. This proposed amendment deletes the affirmative obligation that a DPM be required to increase the Exchange's order flow in securities allocated to the DPM. The Commission believes that it is more appropriate to measure a DPM's performance in its allocated securities by considering, among other things, the

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(5).

Exchange's market share in a DPM's allocated securities rather than generically requiring a DPM to act in such a manner to increase the Exchange's market share.

Finally, the commission is satisfied that the Exchange adequately addressed the issues raised in the comment letters. Upon approval of this order, the Exchange represents that it will issue a regulatory circular to inform its members of the changes to the DPM rules. This regulatory circular will replace the current RG97–114 and should minimize member confusion.

The Commission finds good cause to accelerate approval of Amendment Nos. 2 through 6 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. In Amendment No. 2, the Exchange only made non-substantive, grammatical changes to the proposed rule change and did not change the meaning or intent of the proposed rule change. Moreover, the changes submitted in Amendment No. 2 did not raise any issue of regulatory concern regarding the proposed rule change. Therefore, the Commission believes that good cause exists, consistent with Section 6(b)(5) [29] and Section 19(b) [30] of the Act, to approve the amendment on an accelerated basis.

In Amendment No. 3, the Exchange made conforming changes to proposed Rule 8.82 to make it consistent with the proposed changes to the Exchange's constitution.[31] The Commission notes that these changes were approved by the Exchange's membership and have been noticed in the **Federal Register** for public comment. The Commission did not receive any comment on these changes. Thus, the Commission is satisfied that the Exchange's membership and the public received adequate notice and had a reasonable opportunity to comment on these changes and therefore, there changes may be approved without further publication.

In Amendment No. 4, the Exchange reinstated the current provision that prohibits a DPM from initiating a transaction for its own account that would result in a stop or stop limit order, which the DPM represents as agent, from being put into effect except with the approval of a floor official. The Commission believes that this provision provides significant protections for investors and, thus, it is appropriate to accelerate approval.

In Amendment No. 4, the Exchange also deleted a provision of proposed Rule 8.85(b) that would have permitted a DPM, with MTS Committee approval, to represent discretionary orders under unusual circumstances. Given the potential for conflicts of interest in representing such orders, the Commission believes that it is appropriate to accelerate approval of the proposed deletion of this provision.

Finally, in Amendment No. 4, the Exchange clarified the use of DPMs on an interim basis. The Amendment expressly provides that DPMs appointed on an interim basis must satisfy all of the DMP obligations. The Commission believes that this should help protect investors by ensuring that DMPs appointed on an interim basis satisfy all of the organizational and financial requirements that are required of permanent DPMs.

In Amendment No. 5, the Exchange confirmed that any changes to the DMP financial guidelines proposed by the MTS Committee must be submitted to the Commission, pursuant to SEC Rule 19b–4. The Commission is required to review the financial requirements imposed on DPMs as part of its regulatory responsibilities. Thus, Amendment No. 5 did not contain any new issue of regulatory concern.

In Amendment No. 6, the Exchange proposed to add language to proposed Rule 8.85(a)(viii) to make it consistent with the current language of CBOE Rule 8.80(c)(7). Since this change does not change the intent or meaning of the proposed rule change and only made non-substantive changes, the Commission believes that good cause exists to accelerate its approval.

The Exchange also proposed to delete paragraph (c)(iii) of proposed Rule 8.85 and add language addressing the same issue to proposed Rule 8.88. The Commission notes that the Exchange proposed this change in response to concerns raised by Commission staff.

In addition, the Exchange proposed to delete the discretion it proposed to be granted to itself under the Guidelines for Exemptive Relief Under proposed Rule 8.91(e). Instead, the CBOE proposes to allow DMPs and their affiliates to be structured so as to create a functional separation. The Commission notes that the CBOE has based this proposal on language found in the rules of the Pacific Stock Exchange and the International Securities Exchange.[32] The Commission believes that the proposed amended language adequately addresses the potential misuse of material, non-public information between DPMs and their affiliates. Further, the Commission believes that deleting proposed provision granting the non-specific discretion of the Exchange should ensure that the guidelines are applied evenly and consistently.

Finally, in Amendment No. 6, the Exchange clarified that any changes to the formula for determining the participation entitlement, pursuant to proposed Rule 8.87, must be submitted to the Commission, pursuant to Rule 19b–4. Therefore, the Amendment only clarified the Commission's regulatory authority and did not change the meaning or intent of the proposed rule change. Therefore, for the reasons discussed above, the Commission believes that good cause, consistent with Section 6(b)(5) [33] and 19(b) [34] of the Act, to accelerate approval of Amendment Nos. 2, 3, 4, 5, and 6.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 through 6, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File SR–CBOE–98–54 and should be submitted by August 2, 2000.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [35] that the amended proposed rule change (SR–CBOE–98–54) is approved, and Amendment Nos. 2, 3, 4, 5, and 6 are approved on an accelerated basis.

[29] 15 U.S.C. 78(f)(b)(5).

[30] 15 U.S.C. 78s(b).

[31] *See supra* note 6.

[32] *See* PCX Rule 4.20 and ISE Rule 810.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b).

[35] 15 U.S.C. 78s(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17595 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43010; File No. SR–CHX–00–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc., To Establish a Board Review Process for Decisions of the Exchange's Committee on Specialist Assignment and Evaluation Regarding Specialist Firm Consolidations

July 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 3, 2000, the Exchange amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XXX, Rule 1, Interpretation .01 to establish a board review process for certain decisions of the Exchange's Committee on Specialist Assignment and Evaluation (''Committee''). The text of the proposed rule change is below. Proposed additions are in italics. Proposed deletions are in brackets.

ARTICLE XXX

Specialists

Registration and Appointment

RULE 1. No change to text.

* * * Interpretations and Policies

.01 Committee on Specialist Assignment & Evaluation

ASSIGNMENT FUNCTION

I. Events Leading to Assignment Proceedings

Pursuant to Article XXX, Rules 1 and 8, the Committee may, when circumstances require, assign or reassign a security. *Eight* [Seven] circumstances may lead to the need for assignment of a security. They are:

1. New listing or obtaining unlisted trading privilege;
2. Specialist request;
3. Corporation request;
4. Split-up and/or merger of specialist units;
5. Fundamental change of specialist unit;
6. Consolidations creating Concentration;
[6.]*7.* Unsatisfactory performance action; or
[7.]*8.* Disciplinary action.

The following guidelines have been adopted by the *Exchange* [Committee] for [its] use in the assignment or reassignment of stocks among co-specialists. These guidelines set forth the general policy [of the Committee] concerning the posting and allocation of stocks. They are not, however, rigid rules to be strictly followed regardless of unique circumstances. These guidelines form only the starting point of [the Committee's] deliberations; they will be applied in light of the facts in each individual case. *An assignment may be made subject to such conditions as are appropriate. If any such condition is not met, the stock shall be immediately posted for reassignment.*

1.–5. No change to text.

6. Consolidations creating Concentration.

(a) Whenever a specialist unit acquires, merges, creates a joint trading account or other profit-sharing arrangement with one or more other specialist units or otherwise comes under common control with one or more other specialist units (a ''Consolidation'') the assignments of the affected stocks shall be subject to Committee review and approval.

(b) When a Consolidation creates or increases a specialist unit's financial interest in trades constituting 10% or more of the total Exchange trade volume in the three preceding calendar months (''Concentration''), the Committee will consider:

(i) the effect of the consolidation on the specialist units'

A. Capital supporting specialist activities;

B. Experience and quality of management;

C. Experience and performance of co-specialists;

D. Risk controls and procedures;

E. Operational efficiencies; and

(ii) the effect of the consolidation on the Exchange's ability to:

A. Enhance its competitive position;

B. Minimize risk to the financial integrity of the marketplace; and

C. Continue operating in the public interest.

[6]*7.* No change to text.

[7]*8.* No change to text.

II. Assignment Procedures

* * * * *

4. Board Review. The full Board of Governors, excluding those Governors that are co-specialists or affiliates of co-specialists (a ''Board Panel''), may on its own initiative review any decision of the Committee involving a change in control or consolidation of a specialist unit. The Board Panel shall give any interested member an opportunity to present its views on the matter. A Committee decision will be final if any member of a Board Panel, within ten days of a Committee decision, does not request that the Board Panel initiate a review. Notwithstanding the foregoing, a Board Panel will review all decisions made with respect to Consolidations creating Concentration. The decision of the Board Panel is final.

[4]*5.* No change to text.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to establish a board review process for certain Committee decisions. Specifically, the Exchange proposes an amendment to CHX Article XXX, Rule 1, Interpretation .01.

The Committee currently is charged with approving the assignment of stocks to specialist firms and their co-specialists, as well as evaluating the performance of such specialists and co-specialists. The Committee also reviews and must approve the transfers of assigned issues that typically occur in connection with the acquisitions of specialist firms by other specialist firms.

The Exchange is experiencing significant consolidation of its specialist firms. The Exchange's Board of Governors (''Board'') believes that specialist firm consolidations, and the concentration of business that can result from these consolidations, can raise issues that are significant in the context of the Exchange's long-term business plan and operational forecasts. These issues are beyond those typically addressed by the Committee in the ordinary stock allocation process. The Board thus has determined that it is

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* March 31, 2000 letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the Exchange made minor, technical changes to the proposal.

both appropriate and necessary for the Board to review Committee decisions that raise the broader issues referenced above. Accordingly, the Board has approved a procedure for discretionary, and in certain cases mandatory, Board review and approval of stock assignment transfers in the case of specialist firm consolidations, and for discretionary authority to review and approve transfers of assigned stocks in circumstances where there is a change in control of a specialist firm.

Under the proposal, the Committee will continue to review transfers of assigned stocks in connection with specialist firm consolidations or changes in control of specialist firms, subject to the following new review procedures. A Board panel, composed of all Board members that are not affiliated with specialist firms may review (on a discretionary basis) any Committee decision regarding the transfer of assigned stocks in connection with consolidation [4] of specialist firms or a change in control of a specialist firm, if a member of the Board panel requests discretionary review within 10 days of a Committee decision. If no discretionary review is requested within this period, the Committee decision with respect to the proposed transfer or assigned stocks will become final. If the specialist firm consolidation will create or increase concentration [5] in specialist firms, however, review by the Board panel will be mandatory and no panelist need request the review.

The Exchange believes that the proposed procedures will enable the Exchange to better monitor and regulate the long-term business and operational effects of business combinations among specialist firms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and with the requirements of Section 6(b).[6] In particular, the Exchange believes the proposed rule is consistent with Section 6(b)(5) of the Act [7] in that it is designed to promote just and equitable principles of trade, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–08 and should be submitted by August 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17596 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

[4] ''Consolidation'' of two or more specialist firms includes acquisitions, mergers, creation of joint trading accounts and other profit sharing arrangements, as well as the combining of specialist firms under common control.

[5] ''Concentration'' means a financial interest in trades constituting 10% or more of total Exchange trade volume.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43003; File No. SR–NASD–00–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Mandatory Decimal Pricing Testing

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2000, the National Association of Securities Dealers, Inc. (''NASDA'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated the proposed rule change as one concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to add a new rule, Rule 3420, to the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to require clearing firms and market makers that are members to conduct or participate in the testing of their computer systems to ascertain decimal pricing conversion compatibility of those systems. The text of the proposed rule change is available at the NASD and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require clearing firms and market makers that are members of the NASD to conduct or participate in the securities industry's decimalization pricing tests to ensure that conversion to decimal pricing occurs successfully and with minimal disruption of the markets.[4] The proposed rule change will assist the Association in implementing the SEC's recent Order Directing the Exchanges and NASD to Submit a Decimalization Implementation Plan [5] (''SEC Order''), which directs certain securities industry participants to develop a plan for conversion to decimal pricing. The NASD believes that the proposed rule change, which mandates testing by and among securities industry participants, will play a critical role in ensuring a successful conversion to decimal pricing.

To ensure that its members successfully transition to decimalization, the NASD has been working to prepare the industry for conversion to decimal pricing by requiring testing by and among industry participants.

In particular, the testing by and among industry participants mandated by the proposed rule change will be critical to: (1) Ensuring compliance with the SEC Order; (2) successfully converting the U.S. market to decimal pricing; (3) minimizing any disruption to the markets as a result of such conversion; and (4) reducing the impact of conversion on investors.

The proposed rule change provides authority to the NASD to require participation in organized, industry-sponsored tests, and to require ''point-to-point'' testing between member firms and the NASD and other industry systems. The decimalization testing is expected to be implemented in stages.

Member testing will focus on those firms that the NASD believes could cause the most disruption to the securities markets if their computer system were not able to accommodate decimal pricing—specifically clearing firms and market making firms. The NASD proposes to require market makers and clearing firms to conduct or participate in testing of their computer systems to ascertain the decimal pricing conversion compatibility of such systems.

In connection with the proposed rule change, the NASD intends to issue Notices to Members specifying members' reporting and testing obligations sufficiently in advance of specific testing events to provide members with adequate time to comply. While it is expected that each Notice to Members will be issued with sufficient time for members to comply with a particular testing requirement, nothing in this rule relieves member firms of their ongoing obligation to take all necessary steps so that they may function properly upon industry conversion to decimal pricing.

In addition, the proposed rule change requires firms to provide the NASD with any reports concerning the results of industry tests. Members also would be responsible for maintaining adequate documentation of any tests performed and would be required to make such documentation available for examination by NASD staff.

To assist with reporting test results to the NASD, the staff will design a standardized format for firms to use. Individual member firm testing result reports will not be publicly available, but will be provided to the Securities and Exchange Commission upon request. NASD staff will collect, review and analyze these reports and compile periodic consolidated reports that will be made available to the Securities and Exchange Commission and to others generally to evaluate the progress of the testing effort and the readiness of certain NASD members. In addition, the NASD believes that the individual reports from members will enable the NASD to identify those members that have not adequately prepared for decimal pricing conversion so that appropriate action can be taken to address these members' deficiencies. Any member that is subject to testing and fails to participate in the tests or fails to file any required reports or surveys will be subject to disciplinary action.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that that the proposed rule is necessary to protect investors and the public interest. The proposed rule change, which requires certain members to conduct or participate in decimal pricing testing, and to file reports about the tests, will enable the NASD and the SEC to evaluate the readiness of the securities industry for decimal pricing. The scope of firms subject to the rule is limited to those firms that perform critical functions in the markets and if they were unable to perform these functions upon industry conversion to decimal pricing, could cause disruptions in the markets and, consequently, harm investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately under Section 19(b)(3)(A)(iii) of the Act [6] and subparagraph (f)(3) [7] of Rule 19b–4 thereunder,[8] in that it is concerned solely with the administration of the self-regulatory organization. At any time

[4] The current practice in the U.S. equities markets is to quote security prices in fractions. Decimalization is the conversion of securities industry systems from fractional to decimal pricing. The U.S. securities markets are the only major markets that do not price securities in decimals.

[5] Securities Exchange Act Release No. 42914, (June 8, 2000), 65 FR 38010 (June 19, 2000).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] Inititally, the proposed rule change was filed under subparagraph (f)(1) of Rule 19b–4. This error was corrected by letter dated June 29, 2000. *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, SEC.

[8] 17 CFR 240.19b–4(f)(5).

within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–40 and should be submitted by August 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17547 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43011; File No. SR–Phlx–00–28]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Divide Its Allocation, Evaluation and Securities Into Two Separate Committees

I. Introduction

On March 28, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change that would divide its Allocation, Evaluation and Securities Committee into two separate committees, one for equities and one for options. The proposed rule change was published for comment in the **Federal Register** on May 30, 2000.[3] The Commission received no comments on the proposal. This order approves the Phlx's proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Phlx By-Law Article X, Section 10–7 to divide its Allocation, Evaluation and Securities Committee into two separate committees: an Equity Allocation, Evaluation and Securities Committee and an Option Allocation, Evaluation and Securities Committee. The Exchange also proposes to amend Phlx Rule 500 to reflect the changes in the amended By-Law.

Currently, the Allocation, Evaluation and Securities Committee is composed of one Public Governor, one Non-Industry Governor, three persons who conduct a public securities business, two persons who are active on the equity trading floor, and two persons who are active on the options trading floor.[4] The committee is responsible for appointing specialist units on each floor,[5] approving the transfer of equities and options among specialist units on each floor,[6] allocating equities and options to specialist units on each floor;[7] evaluating the performance of specialist units on each floor,[8] reallocating equities and options from one specialist unit to another on each floor;[9] and supervising questions pertaining to securities admitted to dealings on the Exchange.[10]

Under the proposal, each new committee will consist of nine members. Five persons will be members of both new committees: three off-floor persons who conduct a securities business, one Non-Industry Governor, and one Public Governor. Of the two Governors, one will chair both committees. The remainder of the Equity Allocation, Evaluation and Securities Committee will consist of four persons who are active on the equity trading floor as floor brokers or specialists. The remainder of the Option Allocation, Evaluation and Securities Committee will consist of one person who is active on the options trading floor as a floor broker and three persons who are active on the options trading floor as specialists, registered options traders, or floor brokers.

Each new committee will consist of core members, who will serve a three-year term that will be renewable once, and annual members, who will serve a one-year term that will be renewable twice. The core members of the Equity Allocation, Evaluation and Securities Committee will consist of three persons who conduct a public securities business and two persons who are active on the equity trading floor as specialists or floor brokers. The annual members of the Equity Allocation, Evaluation and Securities Committee will consist of the Public Governor, the Non-Industry Governor, and two persons who are active on the equity trading floor as specialists or floor brokers. The core members of the Option Allocation, Evaluation and Securities Committee will consist of three persons who conduct a public securities business, one person who is active on the options trading floor as a floor broker, and one person who is active on the options trading floor as a specialist, registered options trader, or floor broker. The annual members of the Option Allocation, Evaluation and Security Committee will consist of the Public Governor, the Non-Industry Governor, and two persons who are active on the options trading floor as specialists, registered options traders, or floor brokers.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.[12] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Exchange's proposal will split the existing Allocation, Evaluation and Securities Committee, which has some members who are active on the equities floor and some who are active on the options floor, into two new committees.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 42800 (May 19, 2000), 65 FR 34521.

[4] *See* Exchange Rule 500.

[5] *See* Exchange Rule 501.

[6] *See* Exchange Rule 508.

[7] *See* Exchange Rule 511(b).

[8] *See* Exchange Rules 511(c) to 511(e) and 515.

[9] *See id.*

[10] *See* Exchange Rules 800 to 899.

[11] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

Currently, these floor members, along with the rest of the committee, evaluate specialists and vote to allocate securities to specialist regardless of whether their particular experience is in equities or options. After formation of the two new committees, persons who are active on one of the floors will be members only of the committee that governs their floor. The Commission believes that dividing the committees in this manner will bring greater expertise to the Exchange's allocation and evaluation function, while at the same time preserving independent views on each of the two committees. Accordingly, the Commission believes that the proposed rule change will promote just and equitable principles of trade and benefit investors by ensuring that each new committee includes individuals, with more specific expertise, responsible for allocating securities to, and evaluating the performance of, specialists.

IV. Conclusion.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–00–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17597 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3270]

State of Texas

Brown County and the contiguous counties of Callahan, Coleman, Comanche, Eastland, McCulloch, Mills, and San Saba in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and flooding that occurred on June 15, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 28, 2000 and for economic injury until the close of business on March 29, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.687
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000%

The numbers assigned to this disaster are 327011 for physical damage and 9H6100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 29, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–17559 Filed 7–11–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3360]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Arts of Hon'ami Koetsu, Japanese Renaissance Master''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''The Arts of Hon'ami Koetsu, Japanese Renaissance Master'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, Philadelphia, PA from July 29, thru October 29, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 28, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–17256 Filed 7–11–00; 8:45 am]

BILLING CODE 4710–8–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

T.F. Green Airport, Warwick, Rhode Island; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Rhode Island Airport Corporation under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On December 22, 1999, the FAA determined that the noise exposure maps submitted by the Rhode Island Airport Corporation under Part 150 were in compliance with applicable requirements. On June 15, 2000, the Acting Associate Administrator approved the T.F. Green Airport noise compatibility program. Of the 47 proposed program elements, 40 were approved and the remaining 7 were acknowledged as needing no FAA approval.

EFFECTIVE DATES: The effective date of the FAA's approval of the T.F. Green Airport noise compatibility program is June 15, 2000.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region,

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 238–7602.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the T.F. Green Airport noise compatibility program, effective June 15, 2000.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150.

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA regional Office in Burlington, Massachusetts.

The Rhode Island Airport Corporation submitted to the FAA, on November 4, 1999, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 1998 to November 1999. The T.F. Green Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on December 22, 1999. Notice of this determination was published in the **Federal Register** on January 5, 2000.

The T.F. Green study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2003. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on December 22, 1999, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 47 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Acting Associate Administer effective June 15, 2000.

Of the 47 proposed program elements, 40 were approved and the remaining 7 were acknowledged as needing no FAA approval. The 47 program elements include construction of a parallel taxiway and noise barriers, a voluntary nighttime use restriction between midnight and 6 am for scheduled air carriers and discouragement of engine maintenance run-ups during this period, discouragement of engine start-ups and auxiliary power units prior to the end of the 6 am voluntary use restriction period, designation of close-in noise abatement departure procedures for various runways, establishment of air traffic control procedures for noise abatement, voluntary acquisition of approximately 210 residences within or adjacent to the 70 DNL noise contour, sound insulation of approximately 830 residences between the 65 DNL and 70 DNL noise contours, implementation of a formal Fair Disclosure Policy for real estate within the 65 DNL noise contour, a recommendation that the city of Warwick update its Comprehensive Plan to address the influence of the airport on surrounding community land use, investigation into the sound insulation of two schools outside of the 65 DNL noise contour, installation of a permanent noise monitoring system, implementation of a ''Fly Quiet'' public relations program, establishment of a continuing noise abatement committee to monitor and assist in the implementation of various noise abatement measures, further study analyze the possible extension of Runway 16–34 for noise abatement purposes, and continuation of various program measures from the 1986 approved Noise Compatibility Program.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Acting Associate Administrator on June 15, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Rhode Island Airport Corporation, T.F. Green Airport, 2000 Post Road, Warwick, RI.

Issued in Burlington, Massachusetts on June 22, 2000.

Bradley A. Davis,

Acting Manager, Airports Division, New England Region.

[FR Doc. 00–17611 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–01–I–00–TTN To Impose the Revenue From a Passenger Facility Charge (PFC) at Trenton Mercer Airport, West Trenton, New Jersey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Trenton Mercer Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA–NYADO, Mr. Philip Brito, Suite 446, 600 Old County Road, Garden City, N.Y. 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Trenton Mercer Airport, Mr. Justin P. Edwards, Airport Manager at the following address: Trenton Mercer Airport, Terminal Building, Sam Weinroth Road, West Trenton, N.J. 08628.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Trenton Mercer Aiport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Vornea, P.E. Airport Manager, Airports District Office, FAA–NYADO Suite 446 600 Old County Road, Garden City, New York 11530, Telephone (516) 227–3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Trenton Mercer Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 22, 2000, the FAA determined that the application to impose the revenue from a PFC submitted by Trenton Mercer Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 12, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–I–00–TTN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2001.

Proposed charge expiration date: May 30, 2042.

Total estimated PFC revenue: $15,300,000.

Brief description of proposed project: Design and Construction of New Terminal Building Project.

Class and classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO—Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airport office located at: Federal Aviation Administration, Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York, 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Trenton Mercer Airport.

Issued in NYADO, Garden City, N.Y. on June 26, 2000.

Philip Brito,

Manager, NYADO, Eastern Region.

[FR Doc. 00–17612 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Petition for Exemption for Technological Improvements

In accordance with title 49 Code of Federal Regulations (CFR) sections 211.9 and 211.41, and 49 U.S.C. 20306, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations and a request for exemption of certain statutory provisions. The individual petition is described below, including the party seeking relief, the regulatory and statutory provisions involved, the nature of the relief being sought, and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation (NJ Transit)

Newark City Subway System (NCS)

[FRA Waiver Petition No. FRA–2000–7335]

New Jersey Transit Corporation (NJ Transit) hereby seeks approval of shared use and waiver of regulations from the Federal Railroad Administration (FRA) for the portion of the light rail transit passenger operations of the Newark City Subway System (NCS) that operates on the general railroad system, as described in this Petition and its Exhibits.

New Jersey Transit Corporation (NJ Transit), seeks a permanent waiver of compliance from certain CFR parts of Title 49, specifically: part 219, Control of Alcohol and Drug Use; part 220, Radio Standards and Procedures; part 221, Rear End Marking Device—Passenger, Commuter and Freight Trains; part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses; part 225, Railroad Accidents/Incidents—Reports Classification, and Investigations; part 229, Railroad Locomotive Safety Standards; part 231, Railroad Safety Appliance Standards; Part 238, Passenger Car Safety Standards; part 239, Passenger Rail Emergency Preparedness; part 240, Qualification and Certification of Locomotive Engineers, as well as the statutory requirements of 49 U.S.C. 20301 through 20305 and 49 U.S.C. 21101 through 21108.

NJ Transit seeks approval of shared track usage and waiver of certain FRA regulations involving light rail passenger operations on the Newark City Subway System (NCS). Currently, the NCS is a 4.3 mile, double-track light rail transit system that operates on an exclusive right-of-way in Newark, New Jersey. Presently, the NCS is a rapid transit system in an urban area not connected with the general railroad system. NJ Transit is involved in the construction of an 0.9-mile extension of the NCS which includes a portion of the Norfolk Southern (NS) Orange Industrial Track. NS will use a 0.24-mile portion of one of the tracks on this reconfigured 0.6-mile segment to maintain its operations to serve one freight customer. NCS and NS service on the Shared Track will be temporally separated. See FRA/FTA Proposed Policy Statement at 28241 (64 FR 28238; May 25, 1999).

In each section entitled ''Justification,'' FRA merely sets out NJT Transit's justifications which are included in its petition. In doing so, NJT Transit references the proposed Joint Policy Statement on Shared Used of the General Railroad System issued by FRA and the Federal Transit Administration

(FTA) (64 FR 28238; May 25, 1999) (''FRA/FTA Policy Statement''). The proposed policy statement suggests that regulation of light rail service on the general rail system, under conditions of temporal separation from conventional rail movements, be handled through application of complementary strategies. FRA regulations would generally be employed to address hazards common to light rail and conventional operations for which consistent handling is necessary, while other hazards would be handled under FTA's program of State Safety Oversight (49 CFR part 659). See FRA/FTA Policy Statement for details.

Since FRA has not yet concluded its investigation of the planned NCS, the agency takes no position at this time on the merits of NJ Transit's stated justifications. As part of FRA's review of the petition, FTA will appoint a representative to FRA's Safety Board, and that person will participate in the board's consideration of NJ Transit's waiver petition.

Part 217—Railroad Operating Rules

Part 217 requires each railroad to provide training to employees on the operating rules and perform periodic operational tests to monitor compliance with the operating rules, pursuant to a written program. Under this part, each railroad must also retain testing records and file (or keep available in the case of Class III railroads) a copy of its operating rules with FRA. These requirements are intended to ensure the safety of railroad operations through employee knowledge of and compliance with operating rules.

Justification

NJ Transit requests a waiver from all of the requirements of this part. Training and testing on NCS operating rules are conducted pursuant to NJ Transit Light Rail Operations training requirements. The purpose of the training requirements is to produce an operator who can provide an optimum degree of safety to all employees, customers, and the general public. The initial operating rules training lasts for 7 days, and incorporates lectures, demonstrations and practical exercises. Employees are re-certified annually in operating rules and practices. These are described in Light Rail Operations Safety Rules & Procedures for Employees (LRT Rules and Procedures) and Light Rail Re-Certification Training Manual which contain additional operator training and testing requirements. These requirements will ensure that the NJ Transit employees know and comply with NJ Transit operating rules.

NJ Transit must submit its System Safety Program Plan (SSPP) and Operating Rules to the New Jersey's State Safety Oversight Board (Oversight Board) for review and approval. NJ Transit conducts initial and annual training for employees on the operating rules and conducts employee operational testing and rules inspections on a periodic basis. Employees are recertified on the operating rules annually. Employees receive reinstruction on the operating rules if they are involved in an accident, misuse of equipment, or unsafe acts. Employees also receive reinstruction if they have been away from subway operations for a period of 90 days or more, out sick for an extended period of time, or if reinstruction is requested by management. By start-up of operations on the NCS Extension, records of initial, annual and periodic employee testing and the LRT Rules and Procedures will be available for review by FRA during business hours. See FRA/FTA Policy Statement at 59054, 59056.

Part 219—Control of Alcohol and Drug Use

Part 219, Control of Alcohol and Drug Use, prescribes minimum Federal safety standards for the control of alcohol and drug use by railroad workers for the purpose of preventing accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

Justification

NJ Transit requests a waiver of all of the requirements of part 219 because all of the employees assigned to the NCS who would otherwise be covered employees under this part are already covered employees subject to NJ Transit's existing drug and alcohol program under the FTA rules at 49 C.F.R. Part 653, Prevention of Prohibited Drug Use in Transit Operations and part 654, Prevention of Alcohol Misuse in Transit Operations. NJ Transit's drug and alcohol program incorporates: drug and alcohol screening for new employees; an employee assistance program; drug and alcohol testing for persons receiving a bi-annual physical as part of the Commercial Driver's License requirements, and; random, post-accident, and reasonable suspicion drug/alcohol screening.

The FTA regulations apply to recipients of Federal mass transit funds except those ''specifically excluded'' because those recipients are operating railroads regulated by FRA. 49 CFR 653.5; 49 CFR 654.5. In such cases, a recipient is to follow the FRA regulations in 49 CFR part 219 for its railroad operations. Id. However, such a recipient is still required to certify that it is in compliance with applicable rules and to comply with parts 653 and 654 for its ''non-railroad operations.'' Id. NJ Transit is a recipient of Federal mass transit funds, and therefore, is subject to these compliance certification provisions. Subjecting NCS employees to FRA regulations would create an administrative burden for NJ Transit, both in terms of cost and in terms of recordkeeping.

If granted a waiver from the requirements of part 219, NCS light rail operations would remain under the regulatory jurisdiction of FTA. NCS employees are employed by NJ Transit Bus Operations, Inc. and tested with bus operators and supervisors. Most other safety functions for NCS employees also are administered through NJ Transit Bus Operations, Inc. All of the employees assigned to the NCS LRT operation that would otherwise be covered employees under part 219, would remain covered employees under FTA's rules at parts 653 and 654. Application of the FTA drug and alcohol rules will provide an equivalent level of safety consistent with the policy underlying part 219. A basic review of the respective FRA and FTA regulations reveals that they are quite similar in purpose, structure and substance. Both regulations are intended to enhance safety by prohibiting and eliminating misuse of drugs and alcohol that might otherwise result in accidents and injuries to employees and the traveling public. Both regulations provide for procedural and recordkeeping requirements safeguarding the integrity of the program and providing privacy and due process protections for covered employees. Finally, both sets of regulations prohibit impaired employees from performing safety sensitive functions and require testing in the same situations (random, post-accident, reasonable suspicion, return-to-duty and pre-employment).

Although there are differences between the regulations, there are no major policy differences with respect to the need to eliminate drug and alcohol misuse and the primary importance of safety in transportation operations. The most obvious difference involves the application of penalties for non-compliance. Under FRA rules, a regulated entity found to be in violation of the rule may be subject to civil penalties in accordance with a published schedule. The FTA regulations do not contain such a civil penalty structure. However, under FTA regulations, compliance is a condition for eligibility for receipt of Federal

funds. Non-compliance can result in suspension of eligibility for applicable Federal funding altogether. Thus, the severity of the potential penalty suspension and funding eligibility under FTA rules serves as a deterrent in the same way as does the FRA civil penalty program.

Application of the FTA regulations will provide a level of safety equivalent to that provided by the FRA regulations. This request is consistent with FRA's position on the appropriate treatment of this Part. See FRA/FTA Policy Statement at 59054, 59056.

Part 220—Railroad Communications

Part 220 sets forth minimum requirements governing the availability and use of radios and other wireless communications equipment in connection with railroad operations and right-of-way maintenance. These requirements are intended to enhance operational safety by facilitating communications among railroad employees and offices through the availability of radios and the use of standardized communications protocols.

Justification

NJ Transit requests a waiver from all of the requirements of this part because radio communications on the NCS are conducted according to the requirements of the NCS SSPP. In addition, because of the strict temporal separation, there will be little need for communication between NCS personnel and personnel of NS. Primary indication of track occupancy is provided by the train control system. The NCS has redundant means of communicating, including two-way mobile and base radios, and a remote OCC two-way base radio. All NCS maintenance workers are equipped with two-way radios for communication with each other and the OCC. The LRT Rules and Procedures stipulate communications protocols addressing content and priority of communications, as well as emergency communications, identification of speakers, employee training and testing regarding proper use of radios. Paragraph 3012 states that all two-way radio transmissions are governed by the Federal Communications Commission regulations. LRT Rules and Procedures, E. Compliance with the LRT Rules and Procedures is also monitored as required by Section 4.4 of the SSPP. The LRT Rules and Procedures provide for an equivalent level of safety as FRA rules. This request is consistent with the FRA's position on the appropriate treatment of this part. Statement Concerning Jurisdiction at 59054, 59056.

Section 221.14(a)—Rear End Marking Device

Section 221.14(a) requires that passenger, commuter, and freight trains be equipped with at least one such compliant marking device, which has been approved by FRA in accordance with the procedures included in Appendix A of part 221, and which has specific intensity, beam arc width, color and flash rate characteristics. The requirements are intended to reduce the likelihood of rear-end collisions attributable to the inconspicuity of the rear-end of a leading train.

Justification

NJ Transit requests a waiver from this requirement because the NCS vehicle are equipped with lights and reflectors similar to those required for highway vehicles as contained in NJDOT regulations. The NJDOT regulations adopt and incorporate by reference the Federal Highway Administration's (''FHWA'') Federal Motor Carrier Safety Regulations found at 49 CFR part 393. The external illumination on the NCS vehicles includes headlights, turn signals, tail and brake lights, reflectors, clearance lights, and marker lights at each end of the bi-directional NCS vehicles. In addition, marker lights, turn signal lights, and a reflecting strip, are located on the side of the vehicle. One headlight is mounted next to each brake light, with the headlights capable of being switched from low to high beam. Turn signal lights are visible from both the front and the side of the vehicle. The mounting height and candela value of the lights provided is consistent with the FHWA requirements for commercial motor vehicles. See 49 CFR part 393.

In addition, a railroad lamp is mounted at the center top of each end of the vehicle. The railroad lamp, which has high and low beam capability, is designed for use in dedicated track territory. This lamp meets the applicable requirements of 49 CFR 229.125.

The NCS vehicles have tail and brake light and marker lights to define the end contour of the vehicle, substantially similar to the marking devices required by FRA regulations. NJ Transit submits that safety on the Shared Track will not be compromised by the use of the NCS marking devices. The variation in illumination levels between NCS vehicles and NS trains is not material because of the temporal separation of the operations. The exterior lighting of the NCS vehicle will make the rear of the vehicles conspicuous to following vehicles and temporal separation will mean that freight trains will not follow behind leading NCS vehicles.

Section 223.9(c)—Glazing Requirements

Section 223.9(c) requires that passenger cars be equipped with FRA certified glazing in all windows. This requirement is intended to reduce the likelihood of injury to passengers and/or employees from breakage and shattering of windows (including windshields) and to avoid ejection of passengers from the vehicle in a collision.

Justification

NJ Transit requests a waiver of this requirement for NCS vehicle side windows. FRA will not permit operations on the general system in the absence of effective alternatives to the requirements of this part that provide an equivalent level of safety. Petitioners seeking waiver of this requirement should explain what equivalent safeguards are in place to provide assurances that passengers and crew members are safe from the effects of objects striking the vehicle's windows. Statement Concerning Jurisdiction at 59053. FRA has acknowledged that a transit system that has an SSPP developed under FTA's rules may be able to demonstrate that the Plan satisfies the safety goals of this part. Id. FRA also has recognized that temporal separation can form the basis for a grant of a waiver from safety glazing requirements. In FRA's waiver decision with respect to the Southern New Jersey Light Rail Transit (SNJLRT) project, FRA granted a waiver from the requirements of Section 223.9(c) based upon recognition that ''a transit authority providing service on the general rail system under time separated arrangements should have wide latitude to select equipment well suited to the particular service requirements.''

NCS vehicle side windows will conform to the side impact requirements of ''American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways.'' Glass meeting this standard is break-resistant in normal usage, but can be broken with a standard rescue tool, such as a pry bar or punch, in an emergency. Upon breaking, the glass ''crumbles'' into pebble-like pieces, posing no significant hazard to passengers, employees or rescue personnel. The use of such safety glass windows is standard throughout the rail transit industry, where it has proved both durable and safe.

In addition, the risk associated with vandalism (such as by ballast or other objects thrown against the windows) is addressed from an operations standpoint in the SSPP. Sections 7.0 and 8.0 of the SSPP contain the NCS Security Program tasks and verification procedures. The NCS right-of-way is monitored by Closed-Circuit TV. The NJ Transit Police Department has primary responsibility for NCS security, including assessment and corrective action with respect to facility and equipment damage, vandalism and trespassing. NJ Transit has developed Standard Operating Procedures (''SOP's'') intended to accomplish security goals, including SOP's regarding patrolling facilities and vehicle operator procedures for handling security threats. There is no reason to believe that the NCS vehicle side windows will pose any safety hazard in NCS operations on the Shared Track. The crumble characteristics of the NCS vehicle side windows, the NCS SSPP and NCS temporal separation from freight operations together offer necessary equivalent safety for Shared Track operations.

Section 223.15(c)—Emergency Window Requirements

Section 223.15(c) requires each passenger train car to be equipped with at least four emergency windows designed to permit rapid and easy removal during an emergency. This requirement is intended to enhance safety by providing emergency egress in addition to egress through vehicle doorways.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicles are not manufactured with designated emergency windows. The vehicles, however, are designed to permit equivalent or superior emergency exit options. Each vehicle has nine passenger windows on each side, all of which are made of safety glass and are bonded to the sidewalls. All of these windows are large (approximately 48 inches long by 36 inches high) when compared with conventional commuter rail cars, can be broken with standard rescue tools and can function as emergency windows if necessary. Furthermore, the NCS vehicle doorways provide greater access/egress capability than is found on conventional commuter rail cars. Each vehicle has four sets of double doors on each side of the vehicle. The minimum clearance height of each doorway is 80 inches and the flow lane width of each doorway is at least 24 inches (48 inches in total for each doorway). The vehicle is designed such that the egress time of an AW2 load shall not exceed 60 seconds, calculating egress assuming a flow rate of 2 seconds per passenger per flow lane. The doors are releasable through an emergency release lever located on the inside of each doorway and from at least one doorway per side on the outside of the vehicle. This will enable a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers allows the door leaves to be manually operated. The interior door release levers are clearly marked and in a location accessible to all passengers, compliant with ADA and FRA marking requirements. These release lever features enable quick and easy opening of the doors by passengers, equivalent to FRA emergency exit window requirements.

The doorways are designed to provide the main means of emergency access/egress and because the large windows can function as additional emergency access/egress points, there is very little risk of passengers becoming trapped or rescue personnel being unable to reach passengers. The NCS SSPP contains emergency response plan requirements that include passenger evacuation and crowd control planning.

Section 223.9(d)—Emergency Exit Window Markings

Section 223.9(d) requires that each emergency window be conspicuously and legibly marked with luminescent material on the inside of each car and that clear and legible operating instructions be posted at or near each such window. This section also requires that each window intended for access by emergency responders for extrication of passengers be marked with a retroreflective, unique and easily recognizable symbol or other clear marking and that clear and understandable window-access instructions be posted at each such window or at the end of each car. These requirements are intended to distinguish emergency windows from other windows and provide information on the operation of the emergency windows.

Justification

NJ Transit requests a waiver from these requirements because all side windows on the NCS vehicles are suitable for use in the event of an emergency. It would make no sense and, in fact, could cause confusion to mark any particular side set of windows as designated ''emergency windows.'' All side windows can be broken with standard rescue tools and can function as emergency windows if necessary. Thus, identification of some windows as ''emergency windows,'' and the posting of special operating instructions is not appropriate in this instance and is not necessary for safe emergency egress from the NCS vehicle. Enforcing the marking requirements will not serve the intended safety purpose. In the SNJLRT Waiver Letter, FRA granted NJ Transit's request for relief from the emergency window exit requirements, including the marking requirements. FRA indicated that it believed that emergency egress and rescue access for the vehicle should be resolved through the SSPP process. NJ Transit assumes that FRA would have the same concerns and recommendations here. Accordingly, NJ Transit intends to work with NJ Department of Transportation State Safety Oversight Program to address emergency egress and rescue access. Emergency preparedness drills will be carried out on LRTs on an annual basis. For the foregoing reasons, enforcing the marking requirements would not serve the intended safety purpose.

Part 225—Accident Reporting and Investigation

Part 225 prescribes reporting requirements for equipment and grade crossing accidents and employee injuries meeting specified thresholds. Part 225 also provides for recordkeeping and retention policies, and FRA accident investigations. These requirements support FRA's enforcement efforts and provide information to detect trends on an industry-wide basis.

Justification

NJ Transit requests a waiver of the reporting and investigation requirements for injuries because NJ Transit will be following the injury reporting requirements prescribed in Section 4.3 of the SSPP. NJ Transit intends to comply with injury reporting and investigation requirements in the event of grade crossing accidents.

Employee injuries are subject to FTA rules, and therefore provisions for reporting and investigating employee injuries are included in the SSPP. Pursuant to the SSPP, any employee responsible for the operation or maintenance of the NCS having direct knowledge of an accident or an incident that results in an injury must file a written report. Minor employee injuries such as those requiring first aid or a near miss must be investigated by the Supervisor, Claims Department. Employee injuries of moderate severity

resulting in medical treatment and/or lost time must be investigated by the Supervisor of both the Claims Department and Safety Department, depending upon the severity and circumstances of the injuries. Major injuries involving either serious injury or death must be investigated in-depth by the Supervisors of the Claims and Safety Department. The Safety Department must maintain an investigation recommendation matrix and a follow-up database to track implementation of recommendations. Pursuant to the NJ State Safety Oversight Program, NJ Transit must submit a monthly statement of among other things, injuries to passengers or employees.

If an accident results in a passenger or employee fatality; a fatality occurs at a grade crossing; or two or more employees or passengers are seriously injured requiring admission to a hospital, NJ Transit must provide verbal notification to the National Transportation Safety Board and the NJDOT within two hours of occurrence of the incident. The verbal notification must be followed by submittal of a written report. Records of injuries are maintained at NCS headquarters and may be made available upon FRA request during business hours.

FTA rules require NJ Transit's SSPP to contain provisions for reporting and maintaining records of certain injuries. Therefore, NJ Transit has an interest in establishing a system for uniform reporting of injuries. In addition, NJ Transit is responsible for compliance with applicable workplace injury reporting requirements contained in the New Jersey Public Employee's Occupational Safety and Health Act. The New Jersey Public Employee's Occupational Safety and Health Act is intended to adopt all applicable occupational health and safety standards of, and be as effective as, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* See N.J.A.C. 12:100, Safety and Health Standards for Public Employees; see also N.J.S.A. 34:6A–29(g) and 34:6A–30(a).

NJ Transit must already comply with FTA and New Jersey Public Employee's Occupational Safety and Health Act reporting requirements for injuries on the NCS. Requiring NJ Transit to also comply with FRA regulations would place an unnecessary administrative burden on NJ Transit. NJ Transit's system for recording, reporting and investigating injuries will be equally effective as FRA regulations in terms of preserving important data on injuries. This request is consistent with FRA's position on the appropriate treatment of part 225 as stated in the Statement Concerning Jurisdiction. See FRA/FTA Policy Statement at 59054, 59056.

Section 229.125—Headlights and Auxiliary Lights

Sections 229.125(a) and (d) require locomotives to have headlights and auxiliary lights of specified brightness and placement on the vehicle. The purpose of these requirements is to reduce the risk of collisions attributable to inconspicuity of the train.

Justification

NJ Transit requests a waiver from these two requirements of Section 229.125. The NCS vehicles have headlights and auxiliary lights that together present a triangular pattern and make the vehicles conspicuous to motor vehicles at grade crossings. However, the headlights and auxiliary lights do not match the dimensions set forth in Section 229.125(d) and the lights are not as bright as prescribed in Section 229.125(a).

FRA has stated that it is important for all locomotives (including LRT vehicles meeting the definition of ''locomotive'' or ''cab car'') to present the same distinctive headlight-auxiliary light profile to motor vehicle operators approaching grade crossings in order to reduce the risk of grade crossing accidents. Statement Concerning Jurisdiction at 59053. FRA is amenable to light rail headlights being less bright than conventional locomotive headlights. Id. FRA is willing to grant waivers of part 229, including Sections 229.125(a) and (d), provided that a petitioner explains how its practices will provide for the safe condition and operation of its vehicles and how the vehicle design maintains the triangular pattern required of other locomotives and cab cars to the extent practicable. Id.

The NCS vehicles will have two auxiliary lights similar to those used on motor vehicles. The auxiliary lights will meet the requirements of NJDOT motor vehicle headlight standards. The auxiliary lights will be capable of illuminating a person or object 500 feet away. The NCS vehicles will have a headlight on the top center of each end of the vehicle meeting the requirements of Section 229.125(a) and forming a triangular pattern with the auxiliary lights, to present a distinctive and conspicuous profile to motor vehicle drivers approaching grade crossings. The auxiliary lights on the NCS vehicle will be 43.5 inches above the top of rail and 42 inches apart. The vertical distance from the headlight to the horizontal axis of the auxiliary lights will be 94 inches.

As noted in Section II.G., there are two grade crossings on the segment of the Orange Industrial Track that will become the Shared Track, located at Franklin Street and at Belmont Avenue. As part of the NCS extension project, NJ Transit will reconstruct the Franklin Street and Belmont Avenue grade crossings. The crossings will be protected in accordance with the MUTCD to a design approved by the NJDOT. The public review process required under state law for the reconstruction of the grade crossings at Franklin Street and Belmont Avenue included participation of local emergency service organizations, municipalities (including the City of Belleville, where both grade crossings are located) and transportation planning organizations. The NCS extension includes installation of Bar Signals that are sequenced with traffic signals and grade crossing gates and lights. In addition, the grade crossings at Franklin Street and Belmont Avenue will be maintained in accordance with FRA regulations in part 234.

In the SNJLRT Waiver Letter, FRA granted NJ Transit's request for relief from the requirements of Sections 229.125(a) and (d) based upon the conditions that the vehicle maintain the basic triangular pattern of lights as described in NJ Transit's petition and that NJ Transit undertake a public education and awareness campaign to familiarize residents of the area with the new NCS service on the line, recognition of the light rail vehicles and the continuation of freight service. NJ Transit plans to undertake a public education and awareness campaign to familiarize motorists with the NCS extension.

Section 231.14—Passenger Cars Without End Platforms

Section 231.14 specifies the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances, directly implementing a number of statutory requirements found in 49 U.S.C. 20301–05, the Safety Appliances Act.

The statute contains specific standards for automatic couplers, sill steps, hand brakes, and secure ladders and running boards. Where ladders are required, the statute mandates compliant handholds or grab irons for the roof of the vehicle at the top of each ladder. Compliant grab irons or handholds also are required for the ends and sides of the vehicles, in addition to standard height drawbars. In addition, the statute requires trains to be

equipped with a sufficient number of vehicles with power or train brakes so that the engineer may control the train's speed without the use of a common hand brake. At least 50 percent of the vehicles in the train must be equipped with power or train brakes and the engineer must use the power or train brakes on those vehicles and all other vehicles equipped with such brakes that are associated with the equipped vehicles in the train.

Aside from the statutory requirements, the regulations provide additional and parallel specifications for handbrakes, sill steps, side handholds, end handholds, end handrails, side-door steps and uncoupling levers. More specifically, each passenger vehicle must be equipped with an efficient handbrake that operates in conjunction with the power brake on the train. The handbrake must be located so that it can be safely operated while the passenger vehicle is in motion. Passenger cars must have four sill steps and side-door steps and prescribed tread length, dimensions, material, location and attachment devices for sill steps and side-door steps. In addition, there are requirements for the number, composite material, dimensions, location and other characteristics for side and end handholds and end handrails. Finally, this section requires the presence of uncoupling attachments that can be operated by a person standing on the ground.

These very detailed regulations are intended to ensure that sufficient safety appliances are available and that they will function safely and securely as intended.

Justification

NJ Transit seeks an exemption from the statutory requirements of the Safety Appliances Act and waiver of the implementing of regulations in 49 CFR 231.14. As explained below, NJ Transit seeks an exemption from the statutory requirements of the Safety Appliances Act, because compliance with those requirements would preclude the introduction of efficient railroad transportation equipment ''light rail vehicles'' in temporally-separated shared use operations. NJ Transit seeks a waiver from the corresponding regulations in Section 231.14, because the appliances and the specifications for the appliances contained in that section are unnecessary for assuring the safety of the NCS vehicles to NCS vehicle operators and passengers.

The NCS vehicle has a number of features that provide an equivalent or superior level of safety as compared to a conventional hand brake. Each NCS vehicle will be equipped with four automatic spring applied parking brakes located on the two power trucks in each vehicle. The parking brake operates as part of the normal service braking function of the car. The parking brake is capable of holding the vehicle on a gradient of seven percent at an AW4 load. A one-person crew will operate the NCS vehicles. Normally the NCS will operate the system with single cars. There may be occasions where two cars will be coupled. The car or train will be normally operated from the console in the lead cab. During normal operating conditions, the operator will make all service brake applications. In the event of an emergency, the NCS vehicle will have several features that would permit passengers to activate the braking system. First, an emergency release device located on each passenger door pillar causes an irrevocable application of the service brakes in the event of any application. Second, the eight doors with double door leafs (four locations on each side of each vehicle) are interlocked with the propulsion system to ensure that the NCS vehicle does not move while any doors are open and the opening of the doors while the NCS vehicle is in motion will cause an irrevocable application of the service brake. The braking characteristics of the NCS vehicle will result in a shorter full service brake activation time and easier brake application than would be achieved by the presence of a traditional hand brake. Thus, the safety purpose of the hand brake requirement is achieved, but in a manner that provides an equivalent or superior level of safety.

Sill steps and side-door steps are not necessary for safety on the NCS vehicle, because it is a low floor vehicle designed for low level boarding. The door threshold is 13.75 inches above the top of the rail. This configuration renders sill steps and side-door steps unnecessary. Compliance with the sill step and side-door step requirements would not enhance the safety of the vehicle.

Handholds and handrails are typically intended for use by conductors and crew members performing service and yard duties. However, NCS operations will not involve any service and yard duties from positions outside and adjacent to the vehicle or near vehicle doors. Yard moves will be controlled from the console by the on-board operator and switches will be thrown remotely or through local controls initiated by the on-board operator. Therefore, there is no need for personnel to mount or dismount the vehicle using external appliances of any kind and no need for handholds or handrails on NCS vehicles. In sum, there is no practical need for handholds or handrails and their presence might constitute a safety hazard in the operating environment.

The NCS vehicle is equipped with a fully automatic electric coupler and a mechanical coupler at each end controlled from the operator's position in the cab. The coupler and associated draft gear system has a centering device that retains the unconnected coupler head within its gathering range. The couplers are central couplings with automatic electrical and pneumatic coupling. The operator can initiate uncoupling from the console and no external crew is required to assist in this operation. NJ Transit believes that performing all coupling/uncoupling from inside the vehicle will enhance safety. This elimination of the need for frequent coupling/uncoupling of vehicles, combined with the ability for such activity to take place without crew members in close proximity to the coupler mechanisms eliminates the need for specially placed uncoupling levers and any hazard associated with manual coupling. The NCS vehicle uses dynamic brakes as the primary braking for all service brake applications. The LRT Rules and Procedures requires that each operator perform a pre-trip inspection of his/her equipment, including inspection, testing and maintenance of brake equipment. Operators are required to report any defects or failures to the Maintenance Department immediately and to note such defects or failures on their vehicle condition reports. Therefore, the NCS vehicle brake system will be equivalent to a standard air brake system and thus provide an equivalent level of safety.

NJ Transit may obtain exemption from the statutory safety appliance requirements mentioned above only if application of such requirements would ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations.'' 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that ''other types of railroad equipment might similarly benefit.'' S. Rep. 96–614, at 8, (1980), reprinted in 1980 U.S.C.C.A.N. 1156, 1164.

FRA has recognized the potential public benefits of temporally separated transit use on segments of the general railroad system. Light rail transit systems ''promote more livable

communities by serving those who live and work in urban areas without adding congestion to the nation's overcrowded highways.'' FRA/FTA Policy Statement at 28238. They ''take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive.'' *Id.* There have been many technological advances in types of equipment used for passenger rail operations, such as the use of light rail transit vehicles that will be used for the NCS System. Light rail transit equipment is energy-efficient for passenger rail operations because it is lighter than conventional passenger equipment. Light rail vehicles are able to quickly accelerate or decelerate, which makes them more suitable than other equipment types in systems with closely configured stations. Denying NJ Transit's request for an exemption from certain safety appliance requirements would preclude the implementation of light rail transit for shared use/temporal separation operations. Moreover, compliance with the statutory requirements is not necessary for safe operations. With regard to the regulatory requirements of Section 231.14, as discussed above, the NCS vehicles will be equipped with safety appliances that are more appropriate for light rail transit vehicles, thus achieving an equivalent level of safety in the NCS operating environment.

Part 238—Passenger Equipment Standards

Part 238 prescribes minimum federal safety standards for railroad passenger equipment. NJ Transit requests a waiver from the requirements of part 238, because the NCS vehicles will not meet the requirements of the Part. NCS and NS operations will be temporally-separated. NCS is subject to state safety oversight pursuant to FTA's rules at 49 CFR part 659 and has an SSPP in place.

Section 238.113—Emergency Window Exits

Section 238.113 requires passenger cars to have a minimum of four emergency exit windows, either in a staggered configuration or with one located at each end at each side of the car. Each window must have a minimum unobstructed opening with dimensions of 26 inches horizontally and 24 inches vertically. Each emergency exit window must be easy to maneuver without requiring the use of a tool or other implement. This requirement is intended to provide for sufficient, easily accessible avenues of egress from passenger cars in the case of emergency.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicles do not come equipped with emergency exit windows. The cars, however, are designed to permit equivalent egress so that passengers will not become trapped in the cars in the case of an emergency. See also the discussion related to emergency egress and emergency planning above.

Section 238.115(b)(4)—Emergency Lighting

Section 238.115(b)(4) requires passenger cars to provide battery powered emergency lighting with a 90-minute back-up power system capable of operating without a loss of more than 40 percent minimum illumination levels in all equipment orientations within 45 degrees of the upright and vertical position. The emergency lighting must be capable of operating after the initial shock of a collision or derailment resulting from prescribed individually applied accelerations. The purpose of these requirements is to ensure that in an emergency situation, sufficient lighting will remain available to aid passengers, crew members, and rescue personnel to access and leave the train safely.

Justification

NJ Transit requests a waiver of these requirements because the NCS vehicles will not meet the requirements. However, power for the emergency lighting in the NCS vehicles is provided by a battery with sufficient capacity to sustain emergency loads, including the above lighting, and radio and public address systems, for a period of at least 60 minutes. Additionally, the battery will have sufficient capacity to sustain power to door controls, propulsion and brake controls, coupler control and the horn and bell for a period of at least 60 minutes. The battery is located on the roof of the B section near the central C section of the car, removed from the front of the vehicle where direct collisions may occur. The battery is designed for transit use that requires a rugged design capable of withstanding reasonable shock and vibration. The battery box mounting brackets, as are all mounting brackets of equipment above 90 kg (200 lbs.), are designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction and 3.0 g in the vertical direction.

The NCS vehicles will operate in an urban region; the route short segment of Shared Track is at-grade with many points of easy access for police, fire and other emergency rescue units from adjacent streets. On the Shared Track, emergency responders can reach the NCS system within five (5) minutes. Additionally, the headway between NCS vehicles is no more than 6 minutes (non-rush hour periods) and each vehicle has the capability of acting as a rescue car by coupling with a failed unit and moving it to the next stop for detrainment of passengers. The rescuing car can supply sufficient electrical power to the failed vehicle for the emergency lighting and other functions. In the event that the last scheduled vehicle in a day lost power, the previous vehicle would be returned to recover the failed vehicle.

The NCS main and backup lighting and power systems will provide a level of safety in the NCS operating environment equivalent to that provided in FRA's regulations.

Structural Requirements in Part 238

The waiver requests for the primary structural requirements in part 238 are addressed in this Section III.10.c. Many aspects of the safety justification for waiver of the structural requirements apply equally to all of the structural requirements and, therefore, the generally applicable points are set forth in this introduction.

NJ Transit seeks waiver of all of the structural requirements in part 238, because the NCS vehicle will not meet the requirements. The strict temporal separation of the NCS and NS services virtually eliminates the risk of a collision between a NCS vehicle and a NS freight train, obviating the need for NCS equipment to meet the passenger car structural standards. In addition, the NCS vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

The NCS collision avoidance system is at the heart of the NCS safety design. Marked by complementary elements such as operating rules and procedures, train control technology and the NCS signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving NCS vehicles. Moreover, the NCS vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

Section 238.203—Static End Strength

Section 238.203 provides for the overall compressive strength of rail passenger cars, requiring them to have a minimum static end strength of

800,000 pounds on a line of draft at the ends of occupied volumes without permanent deformation of the car body structure. This section is intended to prevent sudden, brittle-type failure of the main structure of a passenger car, thereby providing protection of occupants in the case of a crash.

Justification

NJ Transit requests a waiver from this requirement because the NCS vehicle will not meet the requirements, but will be designed to attain an equivalent level of safety in the NCS operating environment.

Above and beyond the crash avoidance features of the NCS System, the NCS vehicles are designed to prevent sudden, brittle-type failure of the main structure of a passenger car. The vehicle design accommodates the actual progression of a failure induced by a sudden collision phenomenon; from the elastic limit, through the plastic limit, to a brittle failure. NJ Transit requires the NCS vehicles to be manufactured to comply with the standards summarized in the Summary of NCS Structural Specifications further summarized below:

The structure is capable of sustaining, without any permanent deformation, a longitudinal load 490 kN (110,156 lbf) applied uniformly at coupler bracket, with a uniformly distributed applied AW4 vertical load of 218 kN (49,008 lbf). Actual tests have determined that these minimum values were achieved.

The structure is capable of sustaining, without any permanent deformation, a longitudinal load of 441 kN (99, 141 lbf) applied uniformly at the end sill anticlimber, with a uniformly distributed applied AW4 vertical load of 218 kN (49,008 lbf). In addition the end sill structure is capable of: Sustaining loads up to the peak collapse load of the crush zone without permanent deformation; sustaining the reaction loads generated from the loads specified for collision posts, corner posts and anti-climbers without permanent deformation; and distributing the collision loads incurred during scenarios specified for crashworthiness, such that the collapse of the energy absorption elements in the crush zones is the primary failure mode.

Vehicles are capable of withstanding collisions with other NCS vehicles, motor vehicles, or over-travel buffers without unnecessary risk of injury to passengers or excessive damage to NCS cars and/or track equipment. In a collision, no passenger compartment shell will rupture or suffer any opening through which passengers limbs may protrude; high voltage devices and associated connecting cables will remain contained and will not create electrical shock hazards to personnel; and electrical systems will not create a fire hazard.

To achieve the objective of crashworthiness, a crash energy management approach was used as the basis of the NCS vehicle's structural design. Further, as it is expected that during peak hours that some passengers will stand, it was deemed important to minimize the deceleration of passengers in the event of a frontal collision. The crash energy management of the NCS vehicle in a collision between a NCS two car consist moving at speed V and a stationary two car NCS consist (i) both consists on level tangent track and unbraked, (ii) couplers fully engaged, and (iii) NCS vehicle having a design weight of AW0 of 45,000 kg (99,208 lb.) is detailed in Exhibit E. Actual car weights are averaging 47,700 kg (95,459 lbs.), enhancing the above performance.

The NCS crash avoidance system combined with the above stated specifications will provide equivalent protection to occupants in the case of a crash in the NCS operating environment.

Section 238.205 (a)—Anti-Climbing Mechanism

Section 238.205 (a) requires locomotives (as defined in § 238.5) to have forward and rear end anti-climbing mechanisms capable of resisting an upward or downward vertical force of 200,000 pounds without failure. These requirements are intended to prevent override or telescoping of one passenger train unit into another in the event of high compressive forces caused by a derailment or collision.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle is designed so that: with only two ribs of the anticlimbing mechanism engaged, and a vertical load of 150 kN (33,721 lbs.) combined with a longitudinal compressive load of AW0, 441 kN (99,141 lbs.) applied at the carbody centerline, there will be no permanent deformation of the carbody structure. Analysis has shown that this component will sustain higher loads. In addition, elements within the couplers absorb 115 KJ (84,780 ft.-lbs.) of energy in recoverable energy absorption elements. When this occurs, the coupler moves back until the maximum energy absorption limit is reached when special calibrated bolts break at a predetermined design release load of 450 kN (101,164 lbs. force), allowing the anti-climbers of the colliding vehicles to engage and the loads are taken by the carbodies directly. Anti-climbers are fitted to each end of the cars to avoid overriding and underriding.

While individual structural elements will not conform to the requirement of Section 238.205(a), the assembled carbody uses ''crush zones'' and other techniques to protect passengers in the event of collisions. Specifically, the NCS vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods to dissipate energy and transfer loads to protect the passenger compartment. The anti-climbers and energy absorption mechanisms are designed to limit the potential for override and underride and prevent telescoping. The NCS vehicle design will achieve the uniformity of end structure deformation essential to this objective. The standard to which the NCS vehicle is manufactured will prevent override or telescoping and provide an equivalent level of safety as that provided by the FRA rule.

Section 238.207—Link Between Coupling Mechanism and Car Body

Section 238.207 requires the link between the car coupling mechanism and the car body to be designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds for any normal horizontal position of the coupler, without permanent deformation. The purpose of this requirement is to avoid a premature failure of the draft system so that the anticlimbing mechanism will have an opportunity to engage.

Justification

NJ Transit requests a waiver from this requirement because the NCS vehicle has its own design features to accomplish the purpose of the requirement.

The NCS vehicle is designed so that the carbody structure supporting the coupler will sustain without permanent deformation a load that is equal to 110 percent of the coupler release load (if applicable) or failure load applied at the coupler brackets, with a uniformly distributed AW4 vertical load. In addition, the method of attaching the coupler to the coupler anchor bracket allows the coupler to become fully released from the coupler anchor bracket once the coupler has absorbed its maximum design energy. The coupler is contained and prevented from coming in contact with the track or from protruding into the passenger compartment. The coupler and draftgear is designed to withstand an operating consist with a 17,570 kg (38,735 lbs.),

(AW3) passenger load, pushing or pulling an unpowered consist with a 17,570 kg (38,735 lbs.) (AW3) passenger load, over all grades and curves on the NCS Line, without damage to the coupler.

The intent of the NCS vehicle design is to prevent the coupler shank from contributing to potential damage during a frontal collision. The approach taken is to release the coupler from mechanical connection to the carbody once it has absorbed its maximum design energy. When this occurs the coupler assembly is separated from the coupler anchorage on the car structure. The coupler is retained to prevent it from coming into contact with the track or from protruding into the passenger compartment. This feature is provided to reduce the risk of derailment and penetration of the occupied space. These design standards will allow the NCS vehicle to meet a level of safety equivalent to Section 238.207.

Section 238.209—Forward-Facing End Structure of Locomotives

Section 238.209 requires the skin of the forward-facing end of each locomotive to be equivalent to a ½ inch steel plate with a 25,000 pounds per square inch yield strength; designed to inhibit the entry of fluids into the occupied cab area of the locomotive; and to be affixed to the collision posts or other main vertical structural members so as to add to the strength of the end structure. These requirements are intended to provide protection to persons in the occupied area of the locomotive cab.

Justification

NJ Transit requests a waiver of the requirements in this section because the NCS vehicle is designed to attain a sufficient level of safety in the NCS operating environment.

With respect to the specific design of the forward-facing end structure, both vehicle ends are designed similar to a push-pull cab configuration with corner posts, collision posts and structural shelf. The operator's cab floor finished height is 890 mm (35 inches) above TOR and the vehicle provides a buff strength of 441 kN (99, 141 lbf.) applied uniformly at the end sill anticlimber. The cab floor structure is located immediately behind the anticlimber. NJ Transit believes that the NCS vehicle, along with the other system safety design features, will provide an equivalent level of safety.

Section 238.211—Collision Posts

Section 238.211 requires locomotives to have two full-height collision posts at each end where coupling and uncoupling are expected. Each collision post must have an ultimate longitudinal shear strength of not less than 500,000 pounds at a point even with the top of the underframe member to which it is attached and a longitudinal shear strength of not less than 200,000 pounds exerted at 30 inches above the joint of the post of the underframe. Alternatively, cars may be constructed with an end structure that can withstand the sum of forces that each collision post is required to withstand. This requirement is intended to provide for protection against crushing of occupied areas of passenger cars in the event of a collision or derailment.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle has collision posts or a structural equivalent, protecting at least the area between the underframe and the bottom of the windshield. NJ Transit believes the NCS vehicle design will provide an adequate measure of safety. In order to preclude sudden catastrophic failure or overriding of NCS cars, all connections which attach collision posts, corner posts and structural shelf to each other and/or the underframe structure and roof structure, are made in such a manner to develop the full strength of the load bearing members in shear. The ultimate shear strength of the collision posts is not less than a compression load of 441 kN (99,141 lbs.) applied at the top of the underframe, and at any angle up to ±15° from the longitudinal axis. A compression load of 150 kN (33,721 lbs.) similarly applied 15 inches above the top of the underframe will cause no yielding of the collision posts. All underfloor, and roof mounted equipment weighing more than 90 kg (200 lbs.) is designed to withstand not less than 5.0 times the equipment weight in the longitudinal direction, 2.0 times the equipment weight in the lateral direction, and 3.0 times the equipment weight in the vertical direction. These loads applied separately will not result in stresses that exceed the ultimate strength of the material.

These design requirements provide for the same type of protection of the occupant space as the FRA collision posts requirements, but do so in a way consistent with the design of the NCS vehicle. As noted elsewhere herein, the NCS vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods as part of an overall protection system designed to dissipate energy and transfer loads from impacts to protect the passenger compartment. As part of this system, the NCS collision posts provide protection for the occupied volume of the vehicle shell during a collision. Thus, the NCS vehicle effectively isolates passengers and crew from the hazards of penetration.

Section 238.213—Corner Posts

Section 238.213 requires two full-height corner posts at the end of each vehicle capable of resisting without failure a load of 150,000 pounds at the point of attachment to the underframe and a load of 20,000 pounds at the point of attachment to the roof structure. Each corner post must be able to resist a horizontal load of 30,000 pounds applied 18 inches above the top of the floor without permanent deformation. These requirements serve to provide protection to occupant compartments from side-swipe type collisions.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle is designed to attain a sufficient level of safety in the NCS operating environment.

The NCS vehicle corner posts have a minimum ultimate shear strength of 225 kN (50,582 lbf) applied at the top of the underframe and 75 kN (16,861 lbf) applied 380 mm (15 inches) above the top of the underframe. These requirements cause no yielding of the corner posts. All underfloor, and roof mounted equipment weighing more than 90 kg (200 lbs.) is designed to withstand not less than 5.0 times the equipment weight in the longitudinal direction, 2.0 times the equipment weight in the lateral direction, and 3.0 times the equipment weight in the vertical direction. These loads applied separately will not result in stresses that exceed the ultimate strength of the material.

Here too, while individual structural elements of the NCS vehicle may not conform to the specific requirements, the assembled carbody uses ''crush zones'' and other energy absorption and dissipation techniques to protect passengers in the event of collisions. As part of this system, the corner posts extend from the underframe to the roof structure and are combined with the collision posts, structural shelf, and underframe to become part of the end structure. This design effectively isolates passengers and crew from the hazards of penetration, thereby providing protection for the occupied volume of the vehicle shell during a collision.

The NCS vehicle specifications provide for additional structural protection of the occupant compartments, and, in conjunction with the other safety design features of the vehicle, will provide an equivalent or superior level of safety to the FRA specification.

Section 238.215—Rollover Strength

Section 238.215 sets forth the structural requirements intended to prevent significant deformation of the occupant compartments of passenger cars, in the event the car rolls onto its side or roof. Under this section, a passenger car must be able to support twice the dead weight of the vehicle while the vehicle is resting on its roof or side.

Justification

NJ Transit requests a waiver of this requirement because the NCS vehicle is designed such that the roof is designed to support, without permanent deformation, the equipment mounted on the roof, and maintenance personnel performing their duties. The heaviest equipment is the HVAC unit at 680 kg (1,500 lb). All underfloor and roof mounted equipment weighing more than 90 kg (200 lbs.) is designed to withstand not less than 5.0 times the equipment weight in the longitudinal direction, 2.0 times the equipment weight in the lateral direction, and 3.0 times the equipment weight in the vertical direction. These loads applied separately will not result in stresses that exceed the ultimate strength of the material. With a load of 178 kN (40,000 lbs.) applied to the side wall at the side sill, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure. With a load of 44 kN (10,000 lbs.) applied to the side wall at the belt rail, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure.

The features specified above are designed to enhance crashworthiness and protect the occupied volume. The NCS vehicle incorporates a lightweight low floor design (14 inches from the ground), which lowers the center of gravity as well as the load conditions in rollover circumstances. The NCS vehicle has a lower center of gravity than a standard commuter rail car. Moreover, in the unlikely event of a rollover, the lighter weight of the NCS car means that the roof does not have to support as much weight as would a standard commuter rail car. Because of the inherent requirements for roof and side wall strength, the car will not have significant deformation when the car is resting on its roof or side. In the unlikely event that a derailment leading to a rollover occurs, the NCS vehicle specifications provide for structural protection of the occupant compartments and, in conjunction with the other safety design features of the vehicles, will provide an equivalent measure of safety.

Section 238.217—Side Structure

Section 238.217 sets strength requirements for side posts and corner braces. This section also requires that outside sheathing of mild, open-hearth steel when used flat and without reinforcement in certain side frames be no less than ⅛-inch nominal thickness. When sheathing used for truss construction serves no load-carrying function, the minimum thickness is 40 percent of ⅛-inch nominal thickness. These specifications are intended to provide for additional structural protection, so that a car will derail before it collapses into the occupant compartments.

Justification

NJ Transit requests a waiver of these requirements because the NCS vehicle is designed so that with a load of 178 kN (40,000 lbs.) applied to the side wall at the side sill, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure. In addition, with a load of 44 kN (10,000 lbs.) applied to the side wall at the belt rail, and distributed along 2,500 mm (98.5 inches), there is no yielding or buckling of the carbody structure.

The approach used in designing the NCS vehicle involved minimizing weight while providing maximum protection for passengers consistent with the service requirements. The vehicle has a well-lit interior and external indicator, marker lights and a side reflecting strip, and will therefore be more conspicuous than a regular commuter or freight train.

Additionally the relatively short car length 27,440 mm (90 feet), ensures that the vehicle will not obstruct a grade crossing for an extended period. This, in conjunction with the present constant warning time crossing protection, will encourage observation of grade crossing warnings by the NCS vehicle operator and road vehicle drivers.

NJ Transit believes that although NCS vehicle design elements set forth above may not conform to the specific requirements of the FRA regulation, they will provide, in conjunction with the other safety design features of the vehicles, an equivalent level of safety.

Section 238.233—Interior Fittings and Surfaces

Section 238.233 requires each seat in a passenger car to be securely fastened to the carbody so as to withstand individually applied acceleration of 4g acting in the vertical and in the lateral direction on the deadweight of the seat or seats if a tandem unit. Seat attachments must have an ultimate strength capable of resisting a longitudinal inertial force of 8g acting on the mass of the seat plus the impact force of the mass of an unrestrained 95th percentile male occupant striking the seat from behind when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. This section also requires overhead racks to provide longitudinal and lateral restraint for stowed articles and be attached to the car body with sufficient strength to resist loads due to a longitudinal force of 8g, a vertical force of 4g and a lateral force of 4g. Other interior fittings must meet the same strength requirements. In addition, to the extent possible, all interior fittings in the passenger car are to be recessed or flush-mounted and sharp edges and corners in the locomotive cab or passenger car will be either avoided or padded. Floor mounted seats provided for a crew member assigned to occupy the cab of a locomotive must be capable of withstanding the same load limits as required for overhead storage racks with the mass being that of the seat and a 95th percentile male crew member. These requirements are designed to reduce the likelihood and severity of injury to train occupants caused by the dislodging of seats or other interior items or by occupants striking interior items in the event of an accident.

Justification

NJ Transit requests a waiver of these requirements because the seats and interior fittings of the vehicle have been designed for the NCS operating environment. The vehicle is designed such that the passenger seat consists of a cantilevered supporting structure in the low level and mounted on equipment boxes in the high level. The seat shell and cushion inserts for the seat and back are similar in both locations. The NCS car does not have luggage racks. Aspects of this regulation are more appropriate to an intercity vehicle where luggage accompanies most passengers. This vehicle is used in local service where luggage is typically limited to small carry-on items not

requiring luggage racks such as purses, attache cases, *etc.*

The vehicle interior provides recess or flush-mounted fittings and readily accessible stanchions and resilient seat top grab rails for passenger safety and comfort. Stanchions and grab rails are sized and located to provide optimum arrangement for all passengers. Windscreens are provided adjacent to each doorway in the low level areas, with the upper portion transparent, and incorporating a stanchion extending from the windscreen to the NCS car ceiling. This vehicle also provides more floor space for passenger circulation than an intercity or commuter rail car due to its service characteristics.

It is also important to note that the proposed seat attachment strength requirements are a function of the 800,000 pound compression strength requirement for commuter cars and main line coaches. Because the NCS vehicles have different compression strength values, it is not necessary for the NCS car to meet the proposed 8g/4g force resistance requirements. In the NCS vehicles, the provision of crashworthiness features prevents acceleration in the passenger compartment from reaching such levels. Rather, the limit for collisions up to 20 km/h (12.5 mph) is 1.5 g. Moreover, the high emergency brake rate means that most collisions will be at a lower speed than would be the case with conventional commuter rail cars. The design parameters used for the passenger seats and the attachments are consistent with those specified for use for advanced design transit motor coaches. The NCS vehicle itself is designed for a maximum service speed of 90km/h (55 mph) and does not therefore attain the speeds of rail commuter cars.

Section 238.235—Doors

Section 238.235 provides that each passenger car must have a minimum of two exterior side doors with each door providing a minimum clear opening of 30 inches horizontally and 74 inches vertically. This section also provides for the availability of override devices enabling the opening of doors without power from both the inside and outside of the cars without the use of a tool or other implements.

Justification

NJ Transit requests a waiver of these requirements because the NCS vehicle is designed with an emergency release lever on the inside of each doorway and for one doorway per side on the outside of the vehicle. This enables a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers will allow the door leaves to be manually moved. The interior emergency door release levers will be clearly marked and will be in a location accessible to all passengers, consistent with ADA requirements.

The NCS vehicle has four doorways on each side to permit egress time of an AW2 load in less than 60 seconds. The passenger doorways are two-panel sliding plug type and flush with carbody in the closed position. They are opened and closed electrically and provide direct access from the platform to the car interior. There is no vestibule with secondary door access through a partition to the passenger compartment. The clear opening is 48 inches. The car has four doors per side in the low floor area. This door configuration permits evacuation of 190 passengers from either side in less than 60 seconds. Also, with regard to emergency services access, all side windows can be safely shattered using common rescue implements to provide additional access/egress locations. The design of the door and windows provides an equivalent level of safety to the FRA specifications.

Section 238.237—Automated Monitoring

Section 238.237 requires that controlling locomotives have working alerters. The alerter timing must be set by the operating railroad taking into consideration maximum train speed and signal system capabilities. Under this section, the working alerter must initiate a penalty brake application if the train operator does not respond to the alerter. If the alerter fails en route then a second qualified person will be stationed in the cab or the operator will be in constant communication with a second crew member until the train reaches the next terminal. These requirements are intended to prevent a train collision or derailment due to the inattention or incapacity of the train operator, resulting is loss of control of the train.

Justification

NJ Transit requests a waiver from these requirements because the NCS vehicle is equipped with its own controller and audible type features to provide an equivalent level of safety. If a vehicle operator fails to respond to speed commands, the vehicle automatically goes into a full service brake application that is only released when the speed command is achieved. A keyed control switch is provided on each master controller, which is interlocked such that when keyed up, only the controls in that cab are operable. The master controller power and brake handle incorporates a ''dead-man'' device which when released for any reason when the car is moving in forward or reverse, immediately initiates a propulsion inhibit and a full service brake application, independent of the position of the handle.

In addition to the master controller, redundant safety systems are provided. For example, the vehicle is also controlled by enforce-stop devices that initiate a brake application, if the vehicle is not compliant with speed commands. Also, an emergency stop push-button is provided such that, when pushed, it will activate the emergency brakes. It is possible to activate the emergency stop push-button from any console in a consist. Finally, the NCS service route involves frequent station stops in signaled territory under control of a dispatcher. Violation of a signal aspect will result in a penalty brake application.

Sections 238.301–238.319—Inspection, Testing and Maintenance

Subpart D of part 238, §§ 238.301 through 238.319, contains requirements pertaining to the inspection, testing and maintenance of the passenger equipment and systems required for Tier I passenger equipment. These requirements are designed to ensure that passenger rail operations are conducted only on vehicles whose components and systems are in good working order, thereby reducing both the chances of a equipment-related accident and the severity of damage or injury in the case of an accident.

Justification

NJ Transit anticipates being in compliance with the requirements of Subpart D. However, NJ Transit requests a waiver of any requirements that correlate to the Subpart B or C standards from which NJ Transit has sought waivers. NCS equipment will be subject to a detailed program of inspection, testing and maintenance, as required by the NJDOT System Safety Program Standard and the NCS SSPP. Specifically, Section 5.1.5 of the NJDOT System Safety Program Standard requires the NCS SSPP to provide for periodic and as needed maintenance inspection and testing of equipment and facilities, as well as training and certification of employees in safety-sensitive positions. The NCS SSPP will address these issues in detail, setting forth specific inspection maintenance and testing schedules and protocols for all major equipment, components and systems. Compliance with the SSPP

requirements will be monitored through a periodic audit and reporting program.

Part 239—Passenger Train Emergency Preparedness

Part 239 contains standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. The rules in part 239 were promulgated to reduce the risk of death or injury to passengers, employees and others in the case of accidents or other incidents by providing sufficient emergency egress capability and information to passengers and by having emergency preparedness plans calling for coordination with local emergency response officials. The rules were adopted as a result of several serious crashes involving commuter trains.

Justification

NJ Transit requests a waiver of the emergency preparedness plan requirement in part 239, because the NCS operates in accordance with the emergency preparedness specifications of the NCS SSPP, under the oversight of NJDOT's State Safety Oversight Program.

The SSPP sets forth procedures and requirements dealing with emergency situations tailored to the NCS system, but which also draw on the experience of emergency preparedness standards from other rail transit systems whose operations and equipment more closely resemble the NCS than FRA-regulated commuter rail systems. Section 9 of the State Safety Program Standard, requires the SSPP to contain Emergency Operating Procedures to deal with a variety of emergency situations, including accidents and natural disasters as well as sabotage or other criminal activities. The NCS SSPP contains a detailed emergency response plan which provides for contingency planning for passenger evacuation and crowd control coordination, training and simulation drilling with outside emergency response providers. The emergency response plan also specifies required emergency equipment.

In addition to emergency response planning required by Sections 5 and 9, the State Safety Program Standard requires NJ Transit to engage in a process by which hazards occurring in operations, maintenance and engineering are identified and categorized according to severity and likelihood. Resolutions to reduce hazards to the lowest level practical must then be considered. This process helps NCS to develop the emergency response plan, including the design, in advance, of processes for handling exceptions to established procedures where situations require them. A hazard resolution matrix is included in the SSPP.

In addition, the Safety Committee addresses emergency preparedness issues and provides coordination between NJ Transit, NS and local emergency response agencies. The NJDOT, as part of its oversight activities is responsible for investigation of accidents and other emergency situations. Part 239 prescribes specific requirements for the content and implementation of an emergency preparedness plan. The following is an explanation of how each portion of the NJ Transit emergency preparedness plan will address specific FRA requirements in part 239.

Section 239.101 requires that an emergency preparedness plan include procedures for initial and on-board notification by the control center of outside emergency responders, adjacent rail modes and appropriate railroad officials. The NCS conducts annual emergency simulation exercises. Additionally, local fire departments are briefed regularly on emergency procedures, escape routes and safety issues associated with the NCS system and operation. The NCS SSPP also provides that in the event of an emergency/fire, the OCC will ensure that the NJ Transit Police Department and appropriate local emergency agencies have been notified. The OCC is responsible for: ensuring that the appropriate local emergency agencies have been contacted; shutting down all electrical power to the NCS; maintaining recording communication between NCS management, NJ Transit rail management, car operators, and NCS employees within the affected areas.

Section 239.101(a)(12) requires that the emergency preparedness plan address individual employee responsibility and provide for initial and periodic (every other year) training for OCC personnel and on-board personnel. The NCS SSPP provides extensive training that includes training on the emergency preparedness plan. Section 239.101(a)(12) requires that the emergency preparedness plan address individual employee responsibility and provide for initial and periodic (every other year) training for OCC personnel and on-board personnel. The NCS SSPP provides extensive training that includes training on the emergency preparedness plan. Operators receive extensive training on emergency procedures during their initial operational training. In addition, operators receive annual training on operating rules, procedural rules, and emergency response procedures. Operators will receive initial training for the new OCC train control systems which will include instruction on the traction power system used to control emergency power shut off and the signal system before start-up of operations on the NCS Extension. Once all of the new components of the train control system are in place, NJ Transit will develop an updated comprehensive training program.

Section 239.101(a)(7)(i) requires each railroad to provide passengers with information for emergency situations. Operators are provided with a checklist of emergency procedures to assist passengers. They are also in constant communication with the OCC. Vehicles are signed to indicate emergency actions and precautions.

Section 239.101(a)(5) requires each railroad to establish and maintain a working relationship with the on-line emergency responders. Section 4.7 of the State Safety Program Standard requires NJ Transit to adopt an emergency response plan and procedures which must include a means to communicate and coordinate with external emergency response agencies, and provide for emergency simulations and drills, and training.

Section 239.101(4)(iii) requires the railroad's emergency preparedness plan to coordinate emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or the railroad hosting passenger operations. All NS movements will occur on routes under the control of the NJ Transit Rail Dispatcher or the OCC Dispatcher. Normal emergency response procedures would apply. Moreover, the NS delivery on the Orange Industrial Track has been a regular move for many years under the direction of NJ Transit's Rail Dispatcher. This office is experienced and highly qualified to respond to any eventuality.

Section 239.103 requires each railroad to conduct full-scale emergency simulations to ensure capacity to execute the emergency preparedness plan and coordination with emergency responders. The NCS SSPP requires periodic drills to ensure complete understanding of fire evacuation procedures. In addition, NCS will conduct full-scale emergency simulations on an annual basis.

Section 239.107 requires emergency exit markings and inspection, testing, malfunction reporting and recordkeeping regarding emergency exits. NCS emergency exits were discussed in Sections III.C.5.b and 5.c.

Section 4.4 of the SSPP requires safety audits and investigations. Section 3.4 of the SSPP covers the same ground on recordkeeping. Section 239.301 requires each railroad to periodically conduct operational efficiency tests of its on-board and control center employees to determine the extent of compliance with the emergency preparedness plan. These emergency preparedness standards will provide a level of safety equivalent to the FRA requirements in a manner more appropriate to the NCS operating environment.

Part 240—Qualification and Certification of Locomotive Engineers

Part 240 contains requirements for locomotive engineer eligibility, training, testing, certification and monitoring. In the FRA/FTA Policy Statement, FRA and FTA indicated that FRA would waive the requirements of part 240 for temporally-separated light rail operations subject to state safety oversight under 49 CFR part 659. FRA/FTA Policy Statement, 64 FR at 28241. FRA repeated that intention in the Statement Concerning Jurisdiction, 64 FR at 59055–56.

FRA says petitioners should describe those aspects of their SSPP that assure that operators ''receive the necessary training and have proper skills to operate a light rail vehicle in shared use on the general railroad system.'' Statement Concerning Jurisdiction, FR at 59055. FRA suggests that the petition should ''explain what safeguards are in place to ensure that operators receive at least an equivalent level of training, testing, and monitoring on the rules governing train operations to that received by locomotive engineers employed by conventional railroads.'' *Id.*

NJ Transit requests a waiver from these requirements because NCS will be following operator training and qualification standards contained in the NCS SSPP. Under Section 5.5 of the SSPP, NCS vehicle operators must meet specific training and certification requirements. All operators must pass the operator certification in order to be authorized for operations. NCS operators receive a 7-day training and certification course from the Light Rail Operations Training personnel. The Operational Training Instructors have experience in subway operations. These Instructors are selected from candidates with a three-year clean driving record. They are also experienced as Bus Operator Instructors. Once selected, an Instructor receives Instructional and Presentation skills training and six weeks of on-the-job training. Finally, once the Instructor begins operational training, he/she conducts his/her first class under the observation of a trained Instructor.

The NCS SSPP also provides for recertification of operators by way of reinstruction training or refresher training. An operator receives reinstruction training if he/she has been involved in an accident, misuse of equipment, or has been observed engaging in unsafe acts by management supervision. An operator receives refresher training if the operator has been inactive for more than 90 days, out sick for an extended period of time, or has been requested by management to do so. This training is tailored to the individual employee needs and is done on a one-on-one basis with an Operational Training Instructor.

The initial training course has three days of instruction and three days of operation with an Instructor. Each of the three days of operation requires at least 8 hours; each day covers a different run and at least one day covers a night run. The seventh day of training includes a final road test, a written exam and a review of emergency procedures. The minimum passing score on the written exam is 70 percent. Candidates for operator positions must meet qualifications consistent with NJDOT Commercial Drivers License qualifications. Such qualifications are intended to substantially conform to the requirements and standards under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 2701 *et seq.* See N.J.S.A. 39:3–10.10. The requisite visual acuity must be correctable to 20/20.

NJ Transit believes that compliance with these operator qualification and training requirements will provide at least an equivalent level of safety to the training and other requirements in part 240. See FRA/FTA Policy Statement at 28422.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with either the request for a waiver of certain regulatory provisions or the request for an exemption of certain statutory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA 2000–7335) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on June 22, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–17636 Filed 7–11–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 6, 2000

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 00–17546 Filed 7–11–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–01: OTS Nos. H–3626 and 03164]

First Federal Bancshares, Inc., Colchester, Illinois; Approval of Conversion Application

Notice is hereby given that on June 30, 2000, the Director, Office of Examination and Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Bank, F.S.B., Colchester, Illinois, 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: July 7, 2000.
By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 00–17626 Filed 7–11–00; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Wednesday,
July 12, 2000

Part II

Department of the Treasury

Office of Thrift Supervision
12 CFR Parts 563b and 575

Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes; Interim Rule

Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions from Mutual to Stock Form; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 2000–56]

RIN 1550–AB24

Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations governing repurchases of stock of insured savings associations and certain related provisions in the mutual holding company regulations to ease regulatory burden. OTS is also amending its rules to implement changes regarding waivers of dividends for mutual holding companies, and to incorporate certain changes resulting from the passage of the Gramm-Leach-Bliley Act of 1999 (GLB Act).

DATES: This interim final rule is effective July 12, 2000. Comments must be received by October 10, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–56. Hand-deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Counsel (Banking and Finance), (202) 906–7505, or Gary Jeffers, Counsel (Banking and Finance), (202) 906–6457, Business Transactions Division, Chief Counsel's Office; or Timothy P. Leary, Counsel (Banking and Finance), (202) 906–7170, Regulations and Legislation Division, Chief Counsel's Office; or Mary Jo Johnson, Project Manager (202) 906–5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Stock Repurchases

Current OTS regulations require savings associations to follow OTS rules on stock repurchases for three years following a conversion from mutual to stock form. *See* 12 CFR 563b.3(g). In the first year following the transaction, the savings association cannot repurchase any stock. In the second and third years, the savings association may repurchase up to five percent of its stock in any twelve month period as long as the repurchases do not cause the institution to become undercapitalized, and certain other conditions have been met. OTS has also permitted repurchases in excess of those limits where an institution has established exceptional circumstances, such as when the stock price has fallen below the initial offering price. Because OTS regulations also prohibit savings association subsidiaries of mutual holding companies (MHCs) from repurchasing their stock for the first three years following the association's stock offering (12 CFR 575.11(c)), savings associations that have reorganized into MHC form must request a waiver from OTS regulations to conduct a stock repurchase.

Numerous stock savings associations and subsidiary holding companies of MHCs have requested waivers for stock repurchases in amounts that do not conform to OTS limitations. OTS has routinely granted the requested waivers. OTS has decided the repurchase of stock after the first year following conversion or issuance in an MHC minority stock offering should be a business decision of the institution. OTS believes that there are sufficient means, such as business plan review and approval, to ensure the safe and sound regulation of converted savings associations. Moreover, the current rule is inconsistent with the treatment accorded by other federal banking agencies.

Therefore, OTS revises its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. Where the institution has established extraordinary circumstances, a converted savings association may repurchase its stock during the first year after conversion, provided the savings association files a notice under amended § 563b.3(g)(3) and OTS does not object to the planned repurchase.[1] OTS will work with the FDIC to establish consistent practices among the agencies regarding implementation of this provision.

In determining whether to object to a proposed stock repurchase during the first year following conversion, OTS will consider how the extraordinary circumstances, absent a repurchase, may detrimentally affect an institution's financial condition, the business purpose for the repurchase, and the permissibility of the repurchase under other applicable regulations. *See* amended § 563b.3(g)(3).

OTS also is making corresponding amendments to the mutual holding company (MHC) regulations, and amending the MHC regulations to address MHC purchases of stock of subsidiary savings associations or of subsidiary holding companies.

B. Dividend Waivers for Mutual Holding Companies

OTS regulation § 575.11(d) allows MHCs to waive dividends subject to certain restrictions. Under § 575.11(d), MHCs file notice of their intent to waive dividends and include a copy of a board of directors resolution concluding that the dividend waiver is consistent with the board's fiduciary duties. OTS will not object to the notice if it determines that the waiver would not be detrimental to the safe and sound operation of the savings association.

Waiving dividends saves the MHC from corporate taxation on the dividends and leaves capital at the subsidiary savings association where, in most cases, it can be deployed more efficiently. MHCs have requested clarification on whether the payment of dividends and MHC waiver of dividends will cause OTS to require minority shareholder dilution if the MHC subsequently determines to fully convert to stock form. Minority shareholder dilution would occur if OTS required converting MHCs to reduce the number of shares minority shareholders receive when they exchange their shares for shares in the fully converted company that correspond to the amount of waived dividends. The reduction in shares for minority shareholders reflects that they previously received their dividends while the MHC waived its dividends. OTS has required some dilution in past transactions, but only to the extent of excess or special dividends paid by the subsidiary holding company or savings association to minority shareholders

[1] The proposed repurchase provisions conform to the FDIC's treatment of stock repurchases by converted institutions. *See* 12 CFR 333.4(d) (1999).

and waived by the MHC. OTS has not required shareholder dilution for ordinary dividends.

OTS has reexamined this issue and has determined to change its practice with respect to waived dividends. OTS will no longer require dilution for any waived dividends in a subsequent conversion to stock form. OTS believes the belief that the minority shareholders would experience dilution caused a number of institutions to fully convert to stock form, rather than remain in MHC form. Instead, to prevent excessive dividends OTS will rely on the business plan filed with the reorganization application and on existing restrictions in OTS capital distribution regulations, as well as the fiduciary duty of the board of directors of the MHC to protect the interests of the depositors. Today, OTS amends the MHC regulation to codify this policy.

C. Gramm-Leach-Bliley

Finally, the Gramm-Leach-Bliley Act of 1999 (GLB Act) changed the activities limitations for MHCs to mirror those applicable to financial holding companies.[2] OTS is amending its regulations to make the GLB Act changes in this interim final rule. These changes enhance the MHC as a more suitable long-term alternative then full conversion to stock form for mutual savings associations contemplating such a conversion. Before the GLB Act, MHCs were limited to the activities and investments available to multiple savings and loan holding companies and those permissible for bank holding companies under the Bank Holding Company Act and those available under Section 10(o)(5) of the Home Owners? Loan Act. This change will give MHCs parity with financial holding companies, which have the ability to create financial supermarkets—banking, brokerage and insurance—all offered under one holding company that meets certain requirements.[3] OTS is amending § 575.11(a) to reflect this change.

D. Related Rulemaking

Elsewhere in today?s **Federal Register**, OTS is publishing a related proposed regulation governing mutual savings association, mutual holding company reorganizations, and conversions to stock form.

[2] 12 U.S.C. 1467a(o)(5)(E).

[3] Those requirements include requiring the depository institution controlled by the parent to be well capitalized, well managed and hold at least a satisfactory rating under the Community Reinvestment Act.

Notice and Comment, Effective Date, and Request for Comment

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue rules without prior notice and comment if the agency, for good cause, finds that notice and comment are impracticable, unnecessary, or contrary to the public interest and explains its finding when it publishes the rule. 5 U.S.C. 553(b)(B).

OTS has concluded that it may issue an interim final rule revising the stock repurchase provisions. The current rule is inconsistent with the treatment accorded by other federal banking agencies, not required for the safe and sound regulation of converted savings associations, significantly restricts the ability of institution?s managers to make appropriate business decisions and, thus, unnecessarily limits the ability of savings associations to repurchase stock following a conversion. As a result, the retention of these restrictions would, in the absence of an interim final rule, continue to negatively impact the operations of thrifts and their holding companies. Accordingly, OTS concludes that public notice and comment on these changes are unnecessary and contrary to the public interest.

Notice and public comment also are not required for the interim rule on dividend waivers and shareholder dilution. As noted above, OTS's current policy on shareholder dilution may have inappropriately: (1) Encouraged some institutions in MHC structures to fully convert to stock form; (2) discouraged MHCs from taking full advantage of corporate tax advantages from dividend waivers; and (3) prevented MHCs from exercising their business judgment in deploying capital at the most appropriate level within the corporate structure. These regulatory disincentives would continue to hamper effective decision-making by MHCs in the absence of an effective interim final rule. As a result, OTS concludes that notice and public comment are inappropriate and contrary to public interest.

Similarly, OTS does not believe that public notice and comment are required for the technical change regarding MHC activities. The interim rule merely updates OTS regulations to correctly cite new statutory authority expanding the activities authorized for MHCs. Notice and comment procedures for this change are impractical and contrary to the public interest because such procedures could delay implementation of this new expanded authority for MHCs.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new OTS regulations and amendments to existing regulations take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published. This delayed effective date provision, however, does not apply unless the rule imposes additional reporting, disclosures, or other new requirements on insured depository institution. As a related matter, section 553(d) of the APA states that publication of a rule shall be made not less than 30 days before its effective date. 5 U.S.C. 553(d). This APA provision does not apply if the rule grants or recognizes an exemption or relieves a restriction. OTS believes neither CDRIA nor the APA precludes the publication of this rule with an immediate effective date. As noted above, this rule makes only burden reducing, clarifying and technical conforming amendments to OTS rules and relieves current restrictions on repurchases.[4]

OTS invites comments on this interim final rule during the 60-day period that runs concurrently with its request for comment on companion proposed regulation published elsewhere in today's **Federal Register**.

Regulatory Flexibility Act Analysis

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required when an agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted previously, OTS has determined that it is not necessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nonetheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities. This interim rule eliminates restrictions, imposes no new requirements, and makes only burden reducing, clarifying, and technical conforming amendments to OTS current regulations.

[4] In addition, both CDRIA and the APA permit an agency to select an earlier effective date for ''good cause'' published with the regulation. As noted above, the OTS has determined that there is good cause for publishing rule without notice and public comment. For these same reasons, OTS finds good cause to dispense with the delayed effective date requirements under CDRIA and the APA.

Paperwork Reduction Act

OTS invites comments on all of the following issues:

(1) Whether the information collections contained in this proposal are necessary for the proper performance of OTS? functions, including whether the information has practical utility.

(2) The accuracy of OTS? estimate of the burden of the information collections.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) Ways to minimize the burden of the information collection of respondents, including through the use of automated collection techniques or other forms of information technology.

(5) Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to these collections of information unless they display a currently valid OMB control number.

OTS has submitted the collections of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Act Project (conversion information collection requirement: 1550–0014 or the mutual holding company information collection requirement: 1550–0072) Washington, DC 20503, with copies to the Regulations and Legislation Division (1550–0014 or 1550–0072), Chief Counsel's Office, Office of Thrift Supervisions, 1700 G Street, NW., Washington, DC 20552.

The collections of information requirements in this rule are in parts 563b and 575. OTS requires this information for the proper supervision of savings associations that convert from mutual to stock form under OTS regulations and mutual holding company activities. The likely respondents/recordkeepers are Federal savings associations or mutual holding companies.

OMB Control Number: 1550–0014.

Estimated average annual burden hours per respondent/recordkeeper: 510 hours.

Estimated number of respondents/ recordkeepers: 16 per year.

Estimated total annual reporting and recordkeeping burden: 8,160 hours.

Start up costs to respondents/ recordkeepers: N/A.

OMB Control Number: 1550–0072.

Estimated average annual burden hours per respondent/recordkeeper: 263 hours.

Estimated number of respondents/ recordkeepers: 16 per year

Estimated total annual reporting and recordkeeping burdenhours: 4,874 hours.

Start up costs to respondents/ recordkeepers: N/A.

Executive Order 12866

OTS has determined that this interim final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Pub. L. 104–4, applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted previously, OTS has determined, for good cause, that this interim final rule should take immediate effect and, therefore, that a notice of proposed rulemaking is not required. Accordingly, OTS has concluded that the UMA does not require an unfunded mandates analysis of this interim final rule.

Moreover, OTS finds that this interim rule will not result in expenditure by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Rather, the rule eliminates restrictions, imposes no new requirements, and makes only burden reducing, clarifying, and technical conforming amendments to OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends title 12, Chapter V, Code of Federal Regulations as set forth below:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1.The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c,78l, 78m,78n,78w.

2. Section 563b.3 is amended by revising paragraphs (g)(1) and (g)(3) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(g) * * *

(1) No converted savings association may, for a period of one year from the date of the completion of the conversion, repurchase any of its capital stock from any person, except that this restriction shall not apply to:

(i) A repurchase, on a *pro rata* basis, pursuant to an offer approved by OTS and made to all shareholders of such association;

(ii) A repurchase of qualifying shares of a director; or

(iii) A repurchase approved by OTS under paragraph (g)(3) of this section.

* * * * *

(3) A savings association that is subject to paragraph (g)(1) of this section may not repurchase its capital stock within one year following its conversion to stock form, except that open market stock repurchases of up to five percent of its outstanding capital stock may occur during the first year after the conversion where extraordinary circumstances exist. The savings association must establish compelling and valid business purposes for the repurchases, to the satisfaction of the OTS. The savings association must file a notice with the Regional Director, with a copy to the Office of Examination and Supervision, at least ten days before commencement of the proposed repurchase. The notice must describe the proposed repurchase program and the effects of the proposed repurchases on the savings association's regulatory capital. OTS will not object to the proposed repurchase program if:

(i) The repurchase does not adversely affect the savings association's financial condition;

(ii) The savings association submits sufficient information to evaluate the repurchase program;

(iii) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the repurchase program consistent with the savings association's business plan; or

(iv) The repurchase program would not be contrary to other applicable regulations.

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

3. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

4. Section 575.11 is amended by:

a. Removing, in paragraph (a) the phrase ''12 U.S.C. 1467a(c)(2)(A) or (c)(2)(C)–(c)(2)(G)'', and by adding in lieu thereof the phrase '';12 U.S.C. 1467a(c)(2) or (c)(9)(A)(ii)'';

b. Redesignating, in paragraph (c), the introductory text as paragraph (c)(1) introductory text, and paragraphs (c)(1), (c)(2) and (c)(3), as (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv), respectively;

c. Removing, in newly designated paragraph (c)(1) introductory text the word ''shall'', and by adding in lieu thereof the word ''may''; by removing the phrase ''three years'', and by adding in lieu thereof the phrase ''one year'';

d. Adding, in newly designated paragraph (c)(1), a new paragraph (c)(1)(i);

e. Removing, in newly designated paragraph (c)(1)(iv) the phrase ''but not'' and by adding in lieu thereof the word ''or'';

f. Adding a new paragraph (c)(2); and

g. Adding a new paragraph (d)(3).

The additions and revisions read as follows:

§ 575.11 Operating restrictions.

* * * * *

(c)(1) * * *

(i) Is in compliance with § 563b3(g)(1) of this chapter;

* * * * *

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock issuance, except if the purchase complies with § 563b.3(g)(1) of this chapter. For purposes of this subsection, the reference in § 563b.3(g)(3) of this chapter to five percent refers to minority shareholders.

* * * * *

(d)* * *

(3) The OTS will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

* * * * *

Dated: June 20, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–16346 Filed 7–11–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 2000–57]

RIN 1550–AB24

Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to implement a comprehensive strategy governing mutual institutions, mutual holding company reorganizations, and the mutual to stock conversion process. OTS intends to modify its examination and supervisory policies within the context of safe and sound operations to address many of the concerns mutual institutions have raised about OTS's examination and supervision of their business form. OTS is also proposing to amend certain provisions in its mutual holding company regulations, and its regulations and forms governing mutual to stock conversions of insured savings associations. These proposed regulations include new provisions addressing business plans and charitable contributions. In addition, OTS clarifies certain matters involving conversions from the mutual to the stock form, by, among other things, adding demand account holders to the definition of savings account holders, allowing accelerated vesting in management benefit plans for changes of control, and clarifying the policy on the amount of proceeds allowed to be retained at the holding company level. Further, OTS is rewriting the conversion regulation in a plain language format. In a companion interim final regulation published elsewhere in today's **Federal Register**, OTS is amending the regulations on stock repurchases, changing its practices regarding mutual holding company dividend waivers, and making certain revisions as a result of the Gramm-Leach-Bliley Act of 1999 (GLB Act).

DATES: Written comments must be received on or before October 10, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–57. Hand-deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Counsel (Banking and Finance), (202) 906–7505, or Gary Jeffers, Counsel (Banking and Finance), (202) 906–6457, Business Transactions Division, Chief Counsel's Office; or Timothy P. Leary, Counsel (Banking and Finance), (202) 906–7170, Regulations and Legislation Division, Chief Counsel's Office; or Mary Jo Johnson, Project Manager (202) 906–5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS has broad authority to regulate mutual savings associations, to authorize mutual holding company reorganizations, and to regulate mutual to stock conversions of savings associations under the Home Owners' Loan Act, as amended (HOLA), 12 U.S.C. 1464(a), (i) and (p) and 1467a(o). OTS and its predecessor, the Federal Home Loan Bank Board, in exercising their supervisory responsibilities, periodically refined their regulatory strategies and mutual holding company reorganization and conversion regulations, based on their experience with mutual institutions, the conversion process, and in response to developments in the marketplace. OTS has again reviewed its policies, practices, and regulations to assess whether additions or revisions are necessary. OTS identifies several areas of the regulations that it must revise and update to further clarify the standards governing mutual holding company reorganizations and the conversion process. Also, OTS is revising part 563b using the plain language format.

I. Overview

Despite the large number of mutual-to-stock conversions over the years, there are 422 OTS-regulated mutuals, comprising nearly 40 percent of all OTS-regulated thrifts. In many respects, mutuals form the heart of the thrift industry. Mutuals tend to be community-based, community-focused institutions whose sole purpose is to provide a safe place for community members to save, and to invest those savings back into the community through prudent credit programs. History has demonstrated that this community focus is often lost or diluted when institutions convert to stock form and must respond to the interests of their stockholders.

OTS is developing a comprehensive regulatory strategy governing mutual institutions, mutual holding company reorganizations, and the mutual to stock conversion process. This comprehensive strategy will include: (1) New policy and examination guidance; (2) proposed regulations governing reorganizations into mutual holding companies and the mutual to stock conversion process; (3) interim final rules addressing share repurchases and mutual holding company dividend waivers; and (4) revisions to the application forms used for mutual holding company reorganizations and the mutual to stock conversion process.

A. Policy Guidance

Today, OTS is developing new analytical techniques, examination procedures, and industry guidance to address, within the context of safe and sound operations, many of the concerns mutual institutions have raised about their business form and to improve supervision of mutual institutions. OTS makes these changes in concert with the proposed changes to the mutual holding company and conversion regulations and the interim final rules concerning stock repurchases, dividend waivers, and GLB Act [1] revisions published in today's **Federal Register**.

Specifically, the guidance will focus on capitalization, compensation, and on-site examinations and financial analyses of mutual institutions. For mutual institutions seeking to augment their capital base, OTS is exploring the feasibility and utility of various capital-raising alternatives, such as the use of subordinated debt instruments, mutual capital certificates, non-withdrawable accounts, trust preferred securities, and other financing transactions. Conversely, OTS will study the issues and, if necessary, provide guidance or regulations concerning payment of special dividends by mutual institutions seeking to return excess capital to their communities.

OTS will revise its existing guidance on compensation to clarify its position that mutual institutions are subject to and governed by the same prudential standards as stock institutions. OTS will also explore a methodology by which mutual institutions can choose to have

[1] Pub.L. 106–102, 113 Stat. (1999).

their management and board of directors' compensation plans reviewed in a manner similar to shareholder review and approval for stock institutions. Finally, OTS will inform its examiners on emerging compensation issues and programs. This guidance will enhance the ability of mutual institutions to provide competitive compensation plans to attract and retain qualified management and staff.

OTS is currently developing enhanced analytical tools that will improve supervision of mutual institutions. Revised examination procedures, targeted more directly to the quality of operations, risk management, and internal controls, will enable examiners to more effectively gauge the overall financial condition and the ability of mutual institutions to sustain long-term economic viability throughout economic cycles, including during periods of prolonged adverse economic conditions. OTS also will revise the pre-examination response kit (PERK) to streamline information requests prior to the start of examinations to ensure information requested is germane to the operations of a mutual institution and is essential to the completion of the examination. Enhancements to off-site monitoring systems will also provide for more appropriate comparative financial analyses among similarly situated, community-oriented mutual institutions across geographic boundaries.

For mutuals that elect to convert to stock form, OTS encourages consideration of the mutual holding company (MHC) alternative. The MHC structure retains the benefits and essential nature of the mutual charter, while providing greater access to capital markets. In addition, in section 401(b) of the GLB Act, Congress recently expanded the investment and activities authority of MHCs to include the activities of financial holding companies. More than 40% of the MHCs that have been created to date have chosen to remain MHCs; nevertheless, OTS is today proposing significant enhancements to the MHC form to make it even more attractive as a long-term alternative to full conversion, and is seeking comments on still more enhancements. Whether a savings association elects the MHC format or full conversion, today's rule clarifies various aspects of the conversion process and proposes certain new requirements. In a companion interim final regulation published elsewhere in today's **Federal Register**, OTS is amending certain aspects of the regulations immediately.

B. Conversion Considerations

Stock conversion is a major step for mutual institutions. There are many parties who provide consulting services to mutual institutions concerning the benefits of conversion, and who help institutions through the process. Mutual savings associations, their boards of directors, and management must carefully consider whether the benefits of conversion, and the need for capital, justify the costs and other business implications of conversion.

In considering conversion, mutual boards must carefully examine their need for additional capital and the prospects for prudently deploying capital at competitive returns for investors. Institutions that fail to produce adequate returns on equity will likely face pressure from dissatisfied shareholders to improve performance or sell. OTS believes such pressure can distract management and the board from more fundamental business matters, cost an institution considerable sums in legal and management expense, and lead to disruption of normal business activities.

Often, mutual institutions considering conversion are already highly capitalized. They do not need to raise additional capital through conversion to grow or expand into new markets. Lack of opportunity, not capital, constrains the growth of mutual institutions. Opportunities may be limited by aggressive competition in the mutual institution's market area, lack of economic growth in the market area, unwillingness to venture into unfamiliar markets or products, or lack of adequate staff or appropriate expertise to manage new business. Without a clear need for additional capital, and a clear opportunity for prudently deploying it at a competitive shareholder return over the long term, mutual boards should consider other alternatives to conversion.

Other implications of conversion include fundamental changes in management and operations. Whether conversion brings expansion to new markets, introduction of new products or activities, or simply the continued growth of current activities, successful management of new capital generally requires additional management depth. Conversion also may require new management skills and experience, new staff, new facilities, new or upgraded data processing systems, expansion or refocus of internal audit and compliance management processes, and changes in marketing or customer service strategy.

Finally, the costs of conversion can be significant and often are underestimated, particularly the added burden on existing staff and systems. Mutual boards should consider the cost of additional staff to manage quarterly and annual shareholder reporting, the need for additional or more experienced (and more expensive) independent accountant and legal services to prepare shareholder reporting, the cost of managing shareholder relations, and the cost of annual and special shareholder meetings. Also, there may be a cost to the community if converted institutions are acquired by out-of-town institutions that may not share the same commitment to local community service as many mutuals.

Today's proposed rule includes measures to ensure that mutual boards of directors consider all these factors in determining whether to convert, and consider alternatives to meet the institution's business objectives when conversion may not be an appropriate option. The proposed rule confirms OTS practice of requiring pre-filing meetings, and proposes a new requirement to obtain prior OTS non-objection of conversion business plans. It also sets forth the proposed business plan standards to be addressed by converting institutions and considered in OTS review. OTS requests comment on these proposals.

C. Outline of the Process

The conversion process is complex. An institution that is considering a mutual to stock conversion must first update its business plan. Under today's proposed rule, OTS will require each institution contemplating a conversion to meet with the appropriate Regional Office to discuss the proposed business plan and receive the non-objection of the Regional Director to the business plan before submitting either an application to convert to stock form or a notice to reorganize to mutual holding company form.

Once the board of directors updates and receives OTS's non-objection to its business plan, the board must pass a Plan of Conversion that includes, among other things, an eligibility record date for persons who may subscribe for stock in any stock offering. After it approves the plan, the board of directors must publish a notice of adoption of the Plan of Conversion.

In the next stage, the institution must prepare the application for conversion or reorganization, write a proxy statement for the members to vote on the Plan of Conversion or reorganization, and write an offering circular to offer the institution's new stock. This process can take several months.

The institution must next submit all of these documents to OTS, together with an independent appraisal of the institution and current financial statements. If the institution is forming a holding company to hold its stock, it also must submit the documents to the Securities and Exchange Commission (SEC) for concurrent review. OTS and SEC review generally takes 5 to 6 weeks.

After receiving regulatory clearance, an institution prints and mails its documents to members and potential subscribers. The mailing starts the process of soliciting member votes and selling the institution's stock, which generally takes six to twelve weeks.

II. Description of Revisions to the Conversion Regulations

A. Business Plan

OTS currently requires converting institutions to submit a business plan before filing a Plan of Conversion or reorganization. *See* 12 CFR 563b.11. The proposed regulation clarifies that submitting a business plan is the first step in the conversion process. OTS emphasizes that the board of directors and management of converting institutions need to carefully consider their future operations and activities and, in particular, must have realistic plans regarding how they intend to use the conversion proceeds.

As a preliminary stage in business plan development, the proposed rule establishes a new requirement for a pre-filing meeting with the Regional Office to discuss initial plans for conversion and related implications. Generally, the board of directors, or a committee including outside directors, should participate in the meeting. The purpose of the meeting is to ensure that the board of directors has fully considered the costs and benefits of conversion and the available alternatives, and to generally discuss conversion application requirements.

Under the proposed rule, OTS would not formally accept a business plan, and the 30-day business plan review period provided in the proposed rule would not commence, until after the pre-filing meeting is held. The Regional Office may extend the review period as deemed necessary to request, receive, and review additional information from the institution. OTS will not accept an application for conversion until the Regional Office advises an applicant that the Regional Office does not object to the business plan.

Today's proposed rule also establishes written standards for an acceptable conversion business plan. The business plan should include a complete description of the proposed deployment of capital, demonstrate feasibility, discuss the risks, and address managerial and other resources required. The business plan should discuss the institution's record of success and experience in implementing prior growth or expansion initiatives. OTS strongly encourages institutions with management that does not have sufficient or favorable experience with expansion to consider alternatives to full conversion.

The business plan should demonstrate the ability to realize a reasonable return on equity. OTS recognizes that investor requirements vary with time and market conditions, and so has not proposed an absolute standard. Generally, returns should be considered in relation to trends for publicly-traded thrift and bank stocks, broader equity market returns, and the general level of interest rates. At a minimum, the projected return on equity should exceed, by a margin reflecting relative investment risk, the institution's rates on long-term certificates of deposit. The institution should not consider speculative short-term stock price appreciation, or the effect of returns of capital or repurchases of stock, in assessing the reasonableness of projected return on equity, even though these may indeed be factors considered by investors. Management must provide for consistent, sustainable returns to satisfy long-term investor expectations.

The proposed rule is intended to clarify that OTS expects business plans to fully support the business objectives of conversion. By requiring prior Regional Office non-objection to the business plan, OTS seeks to avoid the delays and unnecessary expense later in the conversion process that may arise from the submission of inadequate or incomplete business plans. The proposed rule also clarifies that institutions, upon completion of conversion, must follow their business plans and that any material deviation from an approved business plan will require the prior written approval of the Regional Director.

OTS also seeks to address the problem that many institutions converting from mutual to stock form experience when they convert without well developed business plans. Generally, institutions quickly realize that they cannot earn an acceptable return on equity or otherwise prudently deploy the conversion proceeds without resorting to large capital distributions (in the form of stock repurchases or extraordinary dividends) in the first few years following the conversion. This return of capital, so soon after its creation, undermines the considerable effort (and expenditures) involved in the conversion process and causes OTS to question whether there was a need for the capital in the first place. OTS views a return of capital to shareholders a material deviation from the business plan that requires the prior written approval of the Regional Director.

OTS encourages institutions considering raising new capital to seriously consider the mutual holding company (MHC) form of reorganization with a limited stock issuance, rather than a full conversion. OTS particularly encourages institutions that have no immediate plans for deployment of the new capital to consider this option. OTS requests comment on whether there are other capital raising techniques for mutual savings associations, short of conversion to stock form or MHC reorganization, that might also work. Currently, mutual institutions can raise capital in a variety of ways, including mutual capital certificates, subordinated debt, trust preferred securities, or the formation of real estate insurance trusts (REITs). OTS is particularly interested in the advantages and disadvantages of one instrument versus another, and why these forms of capital are not widely used. OTS is also interested in knowing why an institution would prefer the conversion or MHC reorganization over other methods of raising capital.

B. Mutual Capital Distributions

In contrast to situations where mutual institutions are seeking ways to raise additional capital, a number of mutual institutions have approached OTS for guidance on the distribution of excess capital to their communities in situations where the institution has determined it is prudent and appropriate. OTS is seeking comment on whether to issue guidance or regulations regarding special capital distributions by mutual institutions.

C. Stock Repurchases

In a separate interim final regulation, OTS is revising its regulations to eliminate restrictions on stock repurchases by converted savings associations after the first year following conversion. *See* Interim Final Rule regarding repurchases of stock, dividend waivers, and GLB Act revisions published elsewhere in this issue of the **Federal Register**. The new rule will be codified at proposed § 563b.515(c)(3) if this proposed rule is adopted as a final rule. OTS is also enacting corresponding amendments to the mutual holding company regulations in the interim final regulation.

D. Charitable Organizations

The current mutual to stock conversion regulations do not address when OTS will approve a charitable organization established as part of the mutual to stock conversion process. To date, OTS has not issued a regulation or guidance on establishing a charitable organization as part of the mutual to stock conversion. [2] OTS currently imposes, on a case-by-case basis, various procedures, requirements, and conditions on mutual savings associations contemplating the establishment of a foundation in the process of a stock conversion. Savings associations wishing to contribute conversion stock to a foundation currently must request waivers of a number of requirements in OTS conversion regulations.

To clarify the standards and procedures for forming a charitable organization or contributing stock as part of the conversion process, OTS proposes new regulations describing when OTS will approve a charitable organization in a conversion. These rules codify the current practices, so that waivers routinely requested in a conversion with a charitable foundation are no longer necessary. The standards include discussing the purpose of the charitable organization, voting foundation shares in the same ratio as all other shares voted on proposals considered by shareholders, reserving board seats for an independent director and a director from the institution, and dealing with conflicts of interest. The rules also specify the conditions for approval including examination by OTS at foundation expense, submission of annual reports, and compliance with all laws necessary to maintain the foundation's tax-exempt status.

E. Demand Account Holders

Current § 563b.3(c) provides that each eligible account holder and supplemental eligible account holder will receive the right to purchase stock. This right is tied to the amount of the account holder's ''qualifying deposit.'' Section 563b.3(e) states that the amount of the ''qualifying deposit'' is the total of the deposit balances in the eligible or supplemental eligible account holder's savings accounts on the close of business on the eligibility or supplemental eligibility record date. The term ''savings account'' is defined by a cross reference to 12 CFR part 561, and includes ''any withdrawable account, except a demand account as defined in 12 CFR 561.16.'' *See* 12 CFR 561.42.

Converting savings associations have requested that both savings and demand accounts be eligible to receive subscription rights. OTS believes converting savings associations should treat all savings and demand account holders the same way. Savings account and demand account holders are both members of the savings association and, therefore, should be given equal treatment. Accordingly, OTS proposes to clarify that the amount of the qualifying deposit is the total of the deposit balances in both savings and demand accounts.

F. Revision of Policy Regarding Management Stock Benefit Plans

In 1994, OTS substantially revised its conversion regulations to codify policies regarding the establishment of management recognition plans and stock option plans in connection with a conversion.[3] OTS intended these amendments to limit benefits realized by management and a few selected individuals in conversions and to give shareholders an opportunity to consider management performance before voting on plans.

Before the 1994 amendment, plans could provide for accelerated vesting in case of death, disability, or a change of control. Existing § 563b.3(g)(4)(xii), as modified by the 1994 amendment, provides for such accelerated vesting only in the case of disability or death.

Most converting associations object to this restriction. To avoid the restriction many converted associations have waited until the first year after conversion, amended their plans to allow for vesting in case of a change of control, and then had shareholders approve the amended plans. Amending plans requires shareholder approval, which entails additional expense and effort, and OTS is unaware of any case where such an amendment was rejected. The revised regulation rescinds the 1994 modification and clarifies that a plan may permit accelerated vesting for disability or death, or a change of control of the converted savings association. OTS will retain the right to object to any payments made in connection with a merger or acquisition.

OTS also is revising its regulation to clarify that it would allow dividend equivalent rights, dividend adjustment rights, or other similar provisions that permit cash payments, adjustment of the number of shares, or exercise price of options as a result of stock dividends or splits, in management recognition plans, stock option plans, or other stock benefit plans. OTS does not believe these types of provisions, which are common in option plans, unduly benefit recipients, as long as these provisions do not violate OTS vesting requirements or pricing requirements for options. *See* proposed § 563b.500.

OTS notes that when an institution lists its stock on the National Association of Securities Dealers Automated Quotation (NASDAQ) National Market System (which many do because it provides for a wider opportunity for trading an institution's stock than the over the counter market), NASDAQ requires shareholder ratification of stock benefit plans. OTS currently requires shareholder ratification of plans within the first year following conversion. OTS proposes to revise the section on management benefit plans to clarify that an institution must present to shareholders for ratification any material amendments to management recognition plans, stock option plans, or other benefit plans that occur more than one year after conversion and that are inconsistent with the regulation.

OTS also is adding a provision to the proposed rule that clarifies a supervisory policy requiring exercise or forfeiture of stock benefits in certain circumstances, such as if an institution becomes critically undercapitalized. *See* proposed § 563b.500.

G. Holding Company Formation

OTS allows a savings association to organize a holding company as part of a mutual to stock conversion. OTS, however, never formally imposed any limit on the amount of conversion proceeds that the holding company may retain. In the past, OTS staff advised institutions that a holding company may keep no more than 50 percent of conversion proceeds. This limit was based on OTS's belief that the institution should get the most proceeds from the conversion. This policy also ensures sufficient capital at the savings association. In today's proposed rule, OTS codifies this position. Accordingly, proposed § 563b.105 will state that the converted savings association must retain at least 50% of the gross conversion proceeds. The amount of proceeds proposed for the holding company level must also be consistent with the business plan.

H. Mutual Holding Company Revisions

The proposed regulation makes some conforming changes to the MHC

[2] A 1992 legal opinion concludes that savings associations have the authority to establish charitable foundations under the ''incidental powers doctrine.'' 1992 OTS LEXIS 76 (Nov. 12, 1992). The opinion does not address the establishment of charitable foundations as part of the mutual-to-stock conversion process.

[3] 59 FR 61247, 61253 (November 30, 1994).

regulations to reflect OTS' intent to make the MHC a more suitable, long-term alternative to full conversion and to incorporate changes made to the conversion regulations. OTS is also proposing that institutions under the MHC format may have option plans that provide more flexibility than currently permitted.

The proposed regulation allows savings association subsidiaries of MHCs, or holding companies inserted in between MHCs and their savings association subsidiaries (Mid-tiers) to offer management benefits or stock option plans that permit issuance of more shares than currently permitted under the regulations. Under the current rule, an institution issuing 20 percent of its stock to minority shareholders could promulgate a stock option plan including two percent of its outstanding shares (*i.e.,* 10 percent of the minority stock issuance). OTS proposes that a savings association subsidiary of an MHC (or Mid-tier) may offer management benefit plans or stock option plans as if minority shareholders held 49 percent of the stock, provided that the MHC retains majority control. Using this option, under the proposed rule an institution issuing 20 percent of its stock to minority shareholders could promulgate a stock option plan including 4.9 percent of the outstanding shares (*i.e.,* 10 percent of the maximum shares that could be issued to minority shareholders).

In addition, OTS will allow the savings association or Mid-tier to adopt the plans at the time of reorganization. However, purchasers of the stock must approve the plan by a separate vote on the stock order form. In addition, the savings association or Mid-tier may make no grants under the plan until at least six months following the reorganization. The delay is designed to allow the stock price to settle in the marketplace before the savings association or Mid-tier makes grants.

Finally, OTS will allow the adoption of additional option plans without requiring an additional stock issuance to all categories of subscribers. Additional plans would be subject to certain restrictions, such as retention of majority ownership at the MHC level, and other applicable regulatory requirements. OTS notes that listing on the NASDAQ and qualification of some plans under IRS rules requires shareholder ratification of benefit plans, and of course OTS's regulation has no impact on these requirements. Additional plan offerings would require notice to OTS, but could be adopted unless OTS objects within 30 days of submission. Among the factors OTS will consider when reviewing the plans are the purpose for creating additional plans, management ratings, or supervisory problems at the converted savings association.

I. Revision of Policy Regarding Acquisitions

Current and proposed rules provide that no person or company may acquire more than 10% of any class of equity security of a recently converted institution for three years following conversion without OTS approval. The primary purposes of this rule are to provide a reasonable period of time for the institution to prudently deploy the new capital according to the plan described in the offering documents, for it to acclimate to operating as a public company, and to do both without the distraction of considering takeover proposals. (*See* approval standards at section 563b.3(i)(5) or proposed section 563b.525(d)).

OTS is aware that shareholder groups have approached management and other shareholders of recently converted institutions as soon as the first quarter following conversion, asserting that shareholder return on equity is inadequate or that management should consider a sale of the institution immediately. In certain situations, OTS has approved acquisitions of recently converted institutions, but in no event before the second year following conversion.

OTS is reconsidering its application of its approval standards. OTS does not believe acquisitions within the first three years following conversion are always in the best interest of newly converted institutions, the communities the institutions serve, or the shareholders. In addition, OTS is concerned that even where the acquisition is considered friendly, approval of the acquisition may be inconsistent with the purposes of the existing rules.

Current and proposed regulations provide newly converted institutions needed time to implement their business plans as presented to OTS and stock purchasers, and fully deploy proceeds according to those plans during the first three years after conversion. Therefore, OTS is notifying the public that it intends to take a very close look at applications under the existing standards to make sure all criteria are fully met before it will give written approval of acquisitions within the first three years following conversion.

J. Comments

OTS invites comment on all aspects of these proposed changes. In addition, OTS may convene a focus group during the public comment period, to ascertain other views on the proposed regulation. OTS will publish the views of the focus group in the public comment summary in the final regulation. In addition to questions posed throughout this preamble, OTS asks:

- How can OTS make the MHC form more attractive? The agency is interested in other enhancements to the MHC form that commenters might suggest.
- For institutions that have determined it is necessary to convert to stock form, will the proposal increase industry interest in converting to MHC form and remaining in that form? OTS asks mutual institutions that are considering converting to stock form if the proposed changes in OTS examination and supervisory policy, coupled with changes to the MHC regulations and the revisions enacted today by the interim final rule accompanying this proposal, make the MHC form a better choice of business organization than a full conversion to stock form.
- Should reorganization into MHC or Mid-tier form require a vote of the members? OTS is unaware of any reorganization that has failed to receive the majority vote of the members. OTS questions the necessity for the expenditure of funds by the institution to obtain a certain vote, particularly since members retain the same voting rights at the MHC that they had before reorganization at the savings association. If OTS removes this requirement for a reorganization, should it be imposed in the event of a full conversion to stock form, when members would lose their voting rights?
- Should mutual institutions be permitted to affiliate with other mutual institutions to leverage managerial and administrative resources while simultaneously retaining their independent community focus using means other than conversion to stock form or reorganization into MHC form? OTS requests comments on this issue in response to inquiries from mutual institutions for ways to affiliate with each other that do not involve the issuance of stock.
- OTS is also exploring the feasibility of creating bankers' banks specifically focused on serving the needs of community-oriented mutual institutions. OTS is seeking comment regarding the level of interest among mutual institutions in the formation of

bankers' banks to specifically serve their needs. Additionally, OTS would like commenters to identify potential regulatory requirements or other obstacles that may impede creation of bankers' banks for mutual institutions.

• What consideration may MHCs or Mid-tiers use to acquire other institutions, such as trust preferred securities, REITs, mutual capital certificates, and stock repurchases to issue stock for acquisitions? OTS has received a number of inquiries recently from MHCs about other currency to accomplish acquisitions.

• How can OTS make it more attractive for mutual institutions to stay in mutual form, particularly where capital raising is not a necessary objective for the institution?

Elsewhere in this issue of the **Federal Register**, OTS is amending its regulations to clarify another area of concern to MHCs, the ability to waive dividends and any attendant consequences.

K. Miscellaneous Revisions

In addition to the proposed revisions described above, OTS proposes a number of miscellaneous revisions to filing and other requirements. Among the other changes, the proposed rule will:

• Revise the definition section of the regulation to include only those definitions that are not defined elsewhere in OTS regulations, or to move specific definitions to the appropriate section of the regulation. *See* proposed § 563b.25.

• Reduce the number of copies of applications that a savings association must file with OTS from ten to seven. *See* proposed § 563b.155.

• Revise the filing requirements to coordinate the place of filing, and number of copies filed, for the application for conversion and any amendments to the application for conversion. *See* proposed §§ 563b.115, 563b.155, 563b.180 and 563b.185.

• Codify the current informal standard requiring a legal opinion indicating that any marketing materials comply with all applicable securities laws. *See* proposed § 563b.275.

• Delete the requirement for a legal opinion regarding insured accounts. *See* proposed § 563b.100 Exhibit 3(d).

L. Forms

OTS is proposing to revise all of the forms currently in the conversion regulations, and has drafted a new form that facilitates the conversion process (Form OF for the Order Form). In drafting these forms, OTS moved a number of requirements currently in the regulations to the related forms. *See* proposed § 563b.05(b). To ensure that the public will have an opportunity to comment on these forms, OTS has appended the forms to this proposed rule and will publish the final forms along with the final rule. The forms, however, will not be codified in the Code of Federal Regulations. They will continue to be available through OTS Washington and Regional Offices and will be accessible on OTS's website after issuance of the final rule.

M. Plain Language Format

OTS redrafted all of part 563b and the related forms using the plain language format. Section 722 of the GLB Act requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. These proposed revisions do not affect the substance of the regulation or forms, but do make them easier to understand.

OTS invites your comments on how to make this proposed rule easier to understand. For example:

• Did we organize the material to suit your needs? If not, how could the material be better organized?

• Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

• Does the rule contain technical language or jargon that isn't clear? If so, what language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

• Would more (but shorter) sections be better? If so, what sections should be changed?

• What else could we do to make the rule easier to understand?

III. Disposition of Existing Rules

Original provision	Proposed provision	Comment
12 CFR 563b.1	12 CFR 563b.5	Nonsubstantive revision, moved.
12 CFR 563b.2(a)	12 CFR 563b.25	Substantive revisions, deletions, and moved.
12 CFR 563b.2(b)		Deleted.
12 CFR 563b.3(a)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(b)	12 CFR 563b.200(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(1)	12 CFR 563b.330(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)	12 CFR 563b.355(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(2)(i)–(ii)	12 CFR 563b.375(a), (d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(3)	12 CFR 563b.360	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)	12 CFR 563b.335(b), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(i)	12 CFR 563b.320(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(ii)	12 CFR 563b.375(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iii)	12 CFR 563b.375(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(4)(iv)	12 CFR 563b.375(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(5)	12 CFR 563b.320(d), 365	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)	12 CFR 563b.320(e), 335(b), (d)	Nonsubstantive revision, deletions and moved.
12 CFR 563b.3(c)(6)(i)	12 CFR 563b.385(a), (c), 380(a)	Substantive revision, deletions and moved.
12 CFR 563b.3(c)(6)(ii)–(iii)	12 CFR 563b.395	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(6)(iv)	12 CFR 563b.390(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(7)	12 CFR 563b.385(a), (c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(8)	12 CFR 563b.370	Nonsubstantive revision, deletions and moved.
12 CFR 563b.3(c)(9)	12 CFR 563b.505(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(10)	12 CFR 563b.330(a), 335(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(11)	12 CFR 563b.420(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(12)	12 CFR 563b.445(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(13)	12 CFR 563b.430(d), 445(b), 465, 485	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(14)	12 CFR 563b.25	Nonsubstantive revision, moved.

Original provision	Proposed provision	Comment
12 CFR 563b.3(c)(15)	12 CFR 563b.440, 445(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(16)	12 CFR 563b.140, 425	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(17)	12 CFR 563b.505(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(18)	12 CFR 563b.505(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(19)	12 CFR 563b.530(a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(20)	12 CFR 563b.150(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(21)	12 CFR 563b.130	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(22)	12 CFR 563b.345(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(23)	12 CFR 563b.320(a)–(d), 380 (a)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.3(c)(24)	12 CFR 563b.520(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(1)–(7)		Deleted.
12 CFR 563b.3(d)(8)	12 CFR 563b.385(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(9)	12 CFR 563b.385(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(10)–(11)		Deleted.
12 CFR 563b.3(d)(12)	12 CFR 563b.390(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(d)(13)		Deleted.
12 CFR 563b.3(e)(1)	12 CFR 563b.25	Nonsubstantive revision, moved.
12 CFR 563b.3(e)(2)		Deleted.
12 CFR 563b.3(f)(1)	12 CFR 563b.445(b), 450, 455, 480	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(2)	12 CFR 563b.445(b), 450	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(3)	12 CFR 563b.470(e), 475	Revision with partial deletion, moved.
12 CFR 563b.3(f)(4)	12 CFR 563b.460	Nonsubstantive revision, moved.
12 CFR 563b.3(f)(5)	12 CFR 563b.470(a)–(d)	Nonsubstantive revision, moved.
12 CFR 563b.3(g)(1)	12 CFR 563b.510	Revision with deletion, moved.
12 CFR 563b.3(g)(2)	12 CFR 563b.510, 520(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(g)(3)	12 CFR 563b.510, 515	Substantive revision with deletion, moved.
12 CFR 563b.3(g)(4)	12 CFR 563b.500	Substantive revision, moved.
12 CFR 563b.3(h)	12 CFR 563b.340(a)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(1)–(2)	12 CFR 563b.340(b)(1)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(i)	12 CFR 563b.525	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(ii)	12 CFR 563b.420(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(3)(iii)	12 CFR 563b.525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(i)		Deleted.
12 CFR 563b.3(i)(4)(ii)–(iv)	12 CFR 563b.525(c)(1)–(3)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(v)	12 CFR 563b.340(b)(2)(ii), 525(c)(4)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(4)(vi)–(5)	12 CFR 563b.525(d)(1)–(2)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(6)	12 CFR 563b.430(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(i)–(ii)	12 CFR 563b.25, 525(b)	Nonsubstantive revision, moved.
12 CFR 563b.3(i)(7)(iii)–(iv)		Deleted.
12 CFR 563b.3(j)	12 CFR 563b.5(a)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(1)	12 CFR 563b.120	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(2)		Deleted.
12 CFR 563b.4(a)(3)	12 CFR 563b.125	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(3)(i)–(ii), (4)(i)–(xviii)	12 CFR 563b.135(a), (b)	Nonsubstantive revision, moved.
12 CFR 563b.4(a)(4)(xix)		Deleted.
12 CFR 563b.4(a)(5)	12 CFR 563b.135(c)	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(1)(i)	12 CFR 563b.180	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(1)(ii)	12 CFR 563b.185	Nonsubstantive revision, moved.
12 CFR 563b.4(b)(2)		Deleted.
12 CFR 563b.4(b)(3)	12 CFR 563b.180(b)	Nonsubstantive revision, moved.
12 CFR 563b.4(c)	12 CFR 563b.160	Nonsubstantive revision, moved.
12 CFR 563b.5(a)	12 CFR 563b.250	Nonsubstantive revision, moved.
12 CFR 563b.5 (b)–(c)	12 CFR 563b.270(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(1)	12 CFR 563b.255	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(2)	12 CFR 563b.260, 265	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(3)	12 CFR 563b.255(h)	Nonsubstantive revision, moved.
12 CFR 563b.5(d)(4)	12 CFR 563b.260	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(1)–(2)	12 CFR 563b.150, 155	Nonsubstantive revision, deletions, and moved.
12 CFR 563b.5(e)(3)	12 CFR 563b.275(d)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(4)		Deleted.
12 CFR 563b.5(e)(5)	12 CFR 563b.150, 160(a)–(b)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(6)	12 CFR 563b.275(e)	Nonsubstantive revision, moved.
12 CFR 563b.5(e)(7)	12 CFR 563b.275(c)	Nonsubstantive revision, moved.
12 CFR 563b.5(f)	12 CFR 563b.280	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(1)–(2)	12 CFR 563b.285(a)	Nonsubstantive revision, moved.
12 CFR 563b.5(g)(3)	12 CFR 563b.290	Substantive revision, moved.
12 CFR 563b.5(h)	12 CFR 563b.285(b)	Nonsubstantive revision, moved.
12 CFR 563b.6(a)	12 CFR 563b.225(a)	Nonsubstantive revision, moved.
12 CFR 563b.6(b)	12 CFR 563b.230	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(1)	12 CFR 563b.235	Nonsubstantive revision, moved.
12 CFR 563b.6(c)(2)		Deleted.
12 CFR 563b.6(d)	12 CFR 563b.235(d)	Nonsubstantive revision, moved.
12 CFR 563b.6(e)	12 CFR 563b.225(b)–(c)	Nonsubstantive revision, moved.

Original provision	Proposed provision	Comment
12 CFR 563b.7(a)(1)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(2)	12 CFR 563b.300(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(3)	12 CFR 563b.325(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(a)(4)		Deleted.
12 CFR 563b.7(b)	12 CFR 563b.300(e), 305	Nonsubstantive revision, moved.
12 CFR 563b.7(c)	12 CFR 563b.330	Nonsubstantive revision, moved.
12 CFR 563b.7(d)	12 CFR 563b.200(b)(8), 300 (c)–(d), Form OC, Item 3.	Nonsubstantive revision, moved.
12 CFR 563b.7(e)	12 CFR 563b.335(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(f)(1)–(2)	12 CFR 563b.200(b)	Nonsubstantive revision, deletion and moved.
12 CFR 563b.7(f)(3)		Deleted.
12 CFR 563b.7(g)(1)–(2)	12 CFR 563b.335(a), Form OF, Items (1), (2)	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.7(g)(3), (4), (5)	Form OF, Items (3), (4), (5)	Nonsubstantive revision, moved.
12 CFR 563b.7(h)	12 CFR 563b.345(a), 350(c)	Nonsubstantive revision, moved.
12 CFR 563b.7(i)	12 CFR 563b.400	Nonsubstantive revision, moved.
12 CFR 563b.7(j)	12 CFR 563b.350(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(1)–(2)	12 CFR 563b.405	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(2)(i)–(ii)	12 CFR 563b.310(d)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(3)		Deleted.
12 CFR 563b.7(k)(4)	12 CFR 563b.310(a)	Nonsubstantive revision, moved.
12 CFR 563b.7(k)(5)	12 CFR 563b.310(b)–(d)	Substantive revision, moved.
12 CFR 563b.8(a)	12 CFR 563b.155	Substantive revision, moved.
12 CFR 563b.8(b)(1)–(2)	12 CFR 563b.150	Nonsubstantive revision, moved.
12 CFR 563b.8(b)(3)		Deleted.
12 CFR 563b.8(c)(1)–(2)(i)–(ii)	12 CFR 563b.240	Nonsubstantive revision, moved.
12 CFR 563b.8(c)(2)(iii)	12 CFR 563b.260	Substantive revision, moved.
12 CFR 563b.8(c)(3)	12 CFR 563b.300(a), (c)	Substantial revisions, deletions, and moved.
12 CFR 563b.8(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.8(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.8(e)	12 CFR 563b.115(a), 155, 180(b), Form AC, General Instruction B.	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.8(f)		Deleted.
12 CFR 563b.8(g)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(h)		Deleted.
12 CFR 563b.8(i)–(1)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(m)		Deleted.
12 CFR 563b.8(n)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(o)		Deleted.
12 CFR 563b.8(p)	12 CFR 563b.150(a)(6), Form AC, General Instruction B.	Nonsubstantive revision, moved.
12 CFR 563b.8(q)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(r)	Form AC, General Instruction B	Substantive revision, moved.
12 CFR 563b.8(s)	Form AC, General Instruction B	Nonsubstantive revision, moved.
12 CFR 563b.8(t)(1)	12 CFR 563b.100	Nonsubstantive revision, moved.
12 CFR 563b.8(t)(2)		Deleted.
12 CFR 563b.8(u)	12 CFR 563b.205	Nonsubstantial revisions, deletions, and moved.
12 CFR 563b.8(v)	12 CFR 563b.530(d)	Nonsubstantive revision, moved.
12 CFR 563b.9	12 CFR 563b.10	Nonsubstantive revision, moved.
12 CFR 563b.10	12 CFR 563b.605(b)–(c)	Nonsubstantive revision, moved.
12 CFR 563b.11	12 CFR 563b.200(c)	Nonsubstantive revision, moved.
12 CFR 563b.20	12 CFR 563b.600	Nonsubstantive revision, moved.
12 CFR 563b.21(a)	12 CFR 563b.605	Nonsubstantive revision, moved.
12 CFR 563b.21(b)	12 CFR 563b.650, 610	Nonsubstantive revision, moved.
12 CFR 563b.22		Deleted.
12 CFR 563b.23(a)–(c)	12 CFR 563b.670, 675	Nonsubstantive revision, additions and moved.
12 CFR 563b.23(d)	12 CFR 563b.690	Nonsubstantive revision, moved.
12 CFR 563b.24(a)–(b)(1), (3)	12 CFR 563b.625(a)(1)	Nonsubstantive revision, moved.
12 CFR 563b.24(b)(2)		Deleted.
12 CFR 563b.24(c)	12 CFR 563b.625(b)	Substantive addition, moved.
12 CFR 563b.25	12 CFR 563b.630	Nonsubstantive revision, moved.
12 CFR 563b.26	12 CFR 563b.625(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(a)	12 CFR 563b.650	Nonsubstantive revision, moved.
12 CFR 563b.27(b)	12 CFR 563b.660(f)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(c)	12 CFR 563b.660(a)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(d)	12 CFR 563b.660(c)	Nonsubstantive revision, moved.
12 CFR 563b.27(e)	12 CFR 563b.660(g)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(f)–(g)	12 CFR 563b.660(e)	Nonsubstantive revision, moved.
12 CFR 563b.27(h)	12 CFR 563b.660(f)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(i)	12 CFR 563b.660(g)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(j)	12 CFR 563b.660(g)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(k)	12 CFR 563b.660(g)(4)	Nonsubstantive revision, moved.

Original provision	Proposed provision	Comment
12 CFR 563b.27(l)	12 CFR 563b.660(d)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(m)	12 CFR 563b.660(d)(2)	Nonsubstantive revision, moved.
12 CFR 563b.27(n)	12 CFR 563b.660(d)(1)	Nonsubstantive revision, moved.
12 CFR 563b.27(o)	12 CFR 563b.660(d)(4)	Nonsubstantive revision, moved.
12 CFR 563b.27(p)	12 CFR 563b.660(a)(3)	Nonsubstantive revision, moved.
12 CFR 563b.27(q)–(r)	12 CFR 563b.660(h)	Nonsubstantive revision, moved.
12 CFR 563b.27(s)	12 CFR 563b.660(g)(5)	Nonsubstantive revision, moved.
12 CFR 563b.28	12 CFR 563b.610	Nonsubstantive revision, moved.
12 CFR 563b.29(a)	12 CFR 563b.660	Nonsubstantive revision, moved.
12 CFR 563b.29(b)		Deleted.
12 CFR 563b.29(d)(1)–(2)	12 CFR 563b.430	Nonsubstantive revision, moved.
12 CFR 563b.29(d)(3)	12 CFR 563b.435	Nonsubstantive revision, moved.
12 CFR 563b.30	12 CFR 563b.675	Nonsubstantive revision, moved.
12 CFR 563b.31	12 CFR 563b.680	Nonsubstantive revision, moved.
12 CFR 563b.32	12 CFR 563b.670(c)	Nonsubstantive revision, moved.
12 CFR 563b.33	12 CFR 563b.670(d)	Nonsubstantive revision, moved.
12 CFR 563b.100	Form AC–1680	Nonsubstantive revision, moved.
12 CFR 563b.101	Form PS–1681	Nonsubstantive revision, moved.
12 CFR 563b.102	Form OC–1682	Nonsubstantive revision, moved.
	12 CFR 563b.105, 110, 115	New provisions.
	12 CFR 563b.295	New provision.
	12 CFR 563b.550–575	New provisions.
	Form OF–1683	New form.

IV. Executive Order 12866

The Director of OTS determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with this proposed rule or certify that the rule would not have a significant impact on a substantial number of small entities.[4] OTS cannot at this time determine whether the rule would have a significant impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.[5]

A description of the reasons why OTS is considering this action, and a statement of the objectives of, and legal basis for, the proposed rule are in the supplementary material above.

1. Small Entities to Which the Proposed Rule Would Apply

The proposed rule applies to mutual savings associations that propose to convert to the stock form of ownership. There are currently approximately 422 mutual savings associations and 27 MHCs subject to OTS oversight. Of these institutions, approximately 252 have less than $100 million in assets. Small depository institutions are generally defined, for RFA purposes, as those with assets under $100 million.[6] In the past two years, OTS has processed 45 and 17 applications, respectively, to convert from mutual to stock or mutual holding company form. Based on this experience, OTS believes that the proposed rule affects fewer than 20 savings associations annually.

2. Requirements of the Proposed Rule

The proposed rule requires mutual savings associations wishing to convert to stock form to prepare a plan of conversion and other supporting forms and documents (such as a business plan and an independent appraisal) and submit the documents for OTS approval. The current mutual to stock conversion regulations require all of these documents or information.

The proposed rule includes a new requirement that a savings association that intends to establish a charitable organization as part of its conversion must supply certain documents and information regarding the charitable organization. Under the current application processing policies, OTS often requires a savings association that intends to establish a charitable organization as part of its conversion to submit the same type of information that the proposed rule would require. As a result, this new requirement should not have any additional impact on small savings associations.

The proposed rule also adds demand account holders to the definition of savings account holders, allows accelerated vesting in management benefit plans for changes of control, and clarifies OTS policy regarding the amount of proceeds allowed at the holding company level. None of these provisions, however, should add to the reporting, recordkeeping, or compliance requirements for small entities.

Although it is not clear that the RFA requires a quantitative analysis of the impact of the proposed regulatory changes, OTS provides the following estimate. The proposed rule's primary economic impact on small savings associations relates to the expense of preparing the application to convert. Savings associations wishing to convert must prepare the necessary documents and forms, including a plan of conversion, a business plan, and an appraisal. Preparation of these documents may require legal or professional help. OTS's experience in the conversion process indicates that savings associations generally hire legal counsel, accountants, marketing agents, and professional appraisers to assist in completion of the necessary documents and forms. Savings associations converting under the current regulations spend approximately $250,000 to one million dollars each to go through the process. We note that the new requirements will add only 10 hours of additional paperwork in preparation, and may save institutions that decide after preliminary business plan preparation and discussion, not to convert, significant time and expense. *See* discussion *infra* at Section VII. The new requirement for information supporting a proposed charitable contribution should not increase these costs appreciably.

3. Significant Alternatives

Section 603(c) of the RFA requires OTS to describe any significant alternatives to the proposed rule that

[4] 5 U.S.C. 605(b).

[5] 5 U.S.C. 603(a).

[6] 13 CFR 121.201, Division H (1999).

accomplish the stated objectives of the rule while minimizing any significant economic impact of the rule on small entities. Section 603(c) lists several examples of significant alternatives, including (1) establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance standards rather than design standards; and (4) exempting small entities from coverage of the rule or a part of the rule.

After consideration, OTS does not believe that any of these alternatives are feasible. As noted, more than half of the savings associations to which the proposed rule could apply meet the RFA standard for ''small depository institutions.'' In fact, the conversion process is aimed largely at small institutions that want to raise capital in the open market by converting to the stock form of ownership. Given that the conversion process is designed with small institutions in mind, modifying the requirements for such small institutions is not necessary. Moreover, given that a conversion cannot be measured for performance until it takes place, the use of performance standards rather than design standards is impractical.

To reduce regulatory burden consistent with the goals of this regulation, the proposed rule specifically permits OTS to waive any requirement under the part where the waiver is equitable and not detrimental to the savings association, the accountholders, or the public interest. This process will provide substantial flexibility to OTS and the savings association to minimize any significant economic impact of a provision on a specific institution.

Nevertheless, OTS requests comments on the burdens associated with the proposed rule that particularly affect small savings associations, and whether any modifications or exemptions from the rules for small savings associations would be appropriate.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (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 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. OTS determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Paperwork Reduction Act

OTS invites comment on all of the following issues:

- Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility.
- The accuracy of OTS's estimate of the burden of the proposed information collection.
- Ways to enhance the quality, utility, and clarity of the information to be collected.
- Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.
- Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OTS submitted the collection of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

The collection of information requirements in this proposed rule are in 12 CFR part 563b. OTS requires this information for the proper supervision of savings associations that convert from mutual to stock form under OTS regulations. The likely respondents/recordkeepers are federal savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 510 hours.

Estimated number of respondents/recordkeepers: 16 per year.

Estimated total annual reporting and recordkeeping burden: 8160 hours.

Start up costs to respondents: N/A.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend title 12, Chapter V, Code of Federal Regulations as set forth below.

1. Part 563b is revised to read as follows:

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Sec.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m,78n,78w.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

§ 563b.5 What does this part do?

(a) *General.* This part governs how a savings association (''you'') may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual to stock conversions. Subpart B of this part governs voluntary supervisory mutual to stock conversions. This part supersedes all inconsistent charter and bylaw provisions of federal savings associations converting to stock form.

(b) *Prescribed forms.* You must use the forms prescribed under this part and provide such information as OTS may require under the forms by regulation or otherwise.

The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

(c) *Waivers.* OTS may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, you must file a written request with OTS that:

(1) Specifies the requirement(s) or provision(s) you want OTS to waive;

(2) Demonstrates that the waiver is equitable, is not detrimental to you, your account holders or other savings associations, and is not contrary to public interest;

and

(3) If applicable, includes an opinion of counsel demonstrating that state law conflicts with the requirement or provision.

§ 563b.10 May I form a holding company as part of my conversion?

You may convert to the stock form of ownership as part of a transaction where you organize a holding company to acquire all of your shares upon their issuance. In such a transaction, your holding company will offer rights to purchase its shares instead of your shares. All of the requirements of subpart A generally apply to the holding company as they apply to the savings association. Section 574.6 of this chapter contains OTS's holding company application requirements.

§ 563b.15 May I form a charitable organization as part of my conversion?

When you convert to the stock form, you may form a charitable organization. Your contributions to the charitable organization are governed by the requirements of §§ 563b.550 through 563b.575.

§ 563b.20 May I acquire another insured stock depository institution as part of my conversion?

When you convert to stock form, you may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 563b.25 What definitions apply to this part?

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in § 574.2(c) of this chapter. The rebuttable presumptions of § 574.4(d) of this chapter, other than §§ 574.4(d)(1) and (d)(2) of this chapter, apply to the share purchase limitations at §§ 563b.355 through 563b.395.

Affiliate of, or a person *affiliated with*, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

Associate of a person is:

(1) A corporation or organization (other than you or your majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 563b.370, 563b.380, 563b.385, 563b.390, 563b.395 and 563b.505, a person who has a substantial beneficial interest in your tax-qualified or non-tax-qualified employee stock benefit plan or who is a trustee or a fiduciary of the plan is not an associate of the plan. For the purposes of § 563b.370, your tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is your director or senior officer, or a director or senior officer of your holding company or your subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Control (including *controlling, controlled by*, and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described at 12 CFR part 574.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date your board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

IRS is the Internal Revenue Service.

Local community includes:

(1) Every county, parish, or similar governmental subdivision in which you have a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in your Community Reinvestment Act assessment area; and

(4) Any other area or category you set out in your plan of conversion, as approved by OTS.

Offer, offer to sell, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with you, are not offers, offers to sell, or offers for sale.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or *buy* is a contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. Your plan of conversion may provide that any savings account with total deposit balances of $50 or less do not qualify.

Sale or *sell* is a contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by OTS is not a sale.

Savings Account is any withdrawable account as defined in § 561.42 of this chapter, including a demand account as defined in § 561.16 of this chapter.

Solicitation and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause your members to procure, withhold, or revoke a proxy. Solicitation or solicit do not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

Subscription offering is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under § 563b.355;

(2) Tax-qualified employee stock ownership plans under § 563b.380;

(3) Supplemental eligible account holders under § 563b.355; and

(4) Other voting members under § 563b.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before OTS approves your conversion and will only occur if OTS has not approved your conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except your officers, directors and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code.

Underwriter is any person who purchases any securities from you with a view to distributing the securities, offers or sells securities for you in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Subpart A—Standard Conversions

Prior to Conversion

§ 563b.100 What must I do before a conversion?

(a) You must meet with OTS before you may file your business plan. You must submit your business plan at least 30 days before you file your application for conversion. You may not file your application for conversion if the Regional Director objects to your business plan.

(b) You must also consult with OTS before you file your application for conversion. OTS will discuss the information that you must include in the application for conversion, general issues that you may confront in the conversion process, and any other pertinent issues.

§ 563b.105 What information must I include in my business plan?

(a) Your business plan must:

(1) Clearly and completely describe your projected operations and activities for three years following the conversion. You must describe how you will deploy the conversion proceeds at the converted savings association (and holding company, if applicable), and include three years of projected financial statements for the converted institution and each holding company, and three years of consolidated financial statements for the holding company. The business plan must provide that the converted savings association must retain at least 50 percent of the gross conversion proceeds.

(2) Demonstrate that your plan for deployment of conversion proceeds will substantially serve to meet credit and lending needs in your proposed market areas. OTS will not approve a business plan that provides for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or the investment is part of a properly managed leverage strategy.

(3) Demonstrate that you have a reasonable need for new capital to support projected operations and activities. You must show that opportunities are reasonably available in your proposed market areas to achieve your planned deployment of conversion proceeds.

(4) Describe your experience with respect to prior growth, expansion, or other initiatives similar to the operations and activities proposed in your business plan.

(5) Describe the risks associated with your plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(6) Demonstrate that your management and board of directors have the expertise, and that you have adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in your business plan.

(7) Demonstrate that you will achieve a reasonable return on equity, commensurate with investment risk, investor expectations, and industry norms, without consideration of assumed, speculative stock price appreciation.

(b) You may not project stock repurchases, returns of capital, or extraordinary dividends in any part of the business plan. A newly converted company should not plan on significant returns of conversion proceeds during the business plan period, except in extraordinary circumstances.

§ 563b.110 Who must review my business plan?

(a) Your chief executive officer and members of the board of directors must review, and at least two-thirds of your board must approve, the business plan.

(b) Your chief executive officer and at least two-thirds of the board must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. You must submit these certifications with your business plan.

§ 563b.115 Under what circumstances will OTS not object to my business plan?

(a) You must file your business plan with the Regional Office. OTS may request additional information, if necessary. You must file your business plan as a confidential exhibit to the Form AC.

(b) OTS will not object to your business plan if it demonstrates prudent deployment of capital and otherwise meets the requirements of § 563b.105.

(c) OTS will review your business plan and will either not object to the plan or will disapprove your business plan. You may not submit your application for conversion until OTS advises you that it does not object to your business plan, except in extraordinary circumstances.

(d) If OTS approves your application for conversion and you complete your conversion, you must operate within the parameters of your approved business plan. You must obtain the prior written approval of the Regional Director for any material deviations from your business plan.

§ 563b.120 May I discuss my plans to convert with others?

(a) You may discuss information about your conversion with individuals that you authorize to prepare documents for your conversion.

(b) Except as permitted under paragraph (a) of this section, you must keep all information about your conversion confidential until your board of directors adopts your plan of conversion.

(c) If you violate this section, OTS may require you to take remedial action. For example, OTS may require you to take any or all of the following actions:

(1) Publicly announce that you are considering a conversion;

(2) Set an eligibility record date acceptable to OTS;

(3) Limit the subscription rights of any person who violates or aids a violation of this section; or

(4) Take any other action to assure that your conversion is fair and equitable.

Plan of Conversion

§ 563b.125 Must my board of directors adopt a plan of conversion?

Your board of directors must adopt a plan of conversion that conforms to §§ 563b.320 through 563b.395 (''Offers and Sales of Stock''). Your board of directors must adopt the plan by at least a two-thirds vote.

§ 563b.130 What must I include in my plan of conversion?

You must include the information included in §§ 563b.320 through 563b.395 (''Offers and Sales of Stock'') in your plan of conversion. OTS may require you to delete or revise any provision in your plan of conversion if OTS determines the provision is inequitable, is detrimental to you, your account holders, or other savings associations, or is contrary to public interest.

§ 563b.135 How do I notify my members that my board of directors approved a plan of conversion?

(a) *Notice.* You must promptly notify your members that your board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in your home office and in your branch offices. You must mail a letter to each member or publish a notice in the local newspaper in every local community where you have an office. You may also issue a press release. OTS may require broader publication, if necessary to ensure adequate notice to your members.

(b) *Contents of notice.* You may include any of the following statements and descriptions in your letter, notice, or press release.

(1) Your board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) You will send your members a proxy statement with detailed information on the proposed conversion before you convene a members' meeting to vote on the conversion.

(3) Your members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(4) You will not vote existing proxies to approve or disapprove the conversion. You will solicit new proxies for voting on the proposed conversion.

(5) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, must approve the conversion before the conversion will be effective. Your members will have an opportunity to file written comments, including objections and materials supporting the objections, with OTS.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of your conversion before OTS will approve the conversion.

(7) OTS, and in the case of a state-chartered savings association, the appropriate state regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits. FDIC will continue to insure the accounts.

(9) Your conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) Your business of accepting deposits and making loans will continue without interruption.

(11) Your current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) You may continue to be a member of the Federal Home Loan Bank System.

(13) You may substantively amend your proposed plan of conversion before the members' meeting.

(14) You may terminate the proposed conversion.

(15) After OTS, and in the case of a state-chartered savings association, the appropriate state regulator, approve the proposed conversion, you will send proxy materials providing additional information. After you send proxy materials, members may telephone or write to you with additional questions.

(16) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase your shares.

(17) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase your shares.

(18) A brief description of how voting members may participate in the conversion.

(19) A brief description of how directors, officers, and employees will participate in the conversion.

(20) A brief description of the proposed plan of conversion.

(21) The par value (if any) and approximate number of shares you will issue and sell in the conversion.

(c) *Other requirements.* (1) You may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of your shares upon conversion in the letter, notice, or press release.

(2) If you respond to inquiries about the conversion, you may address only the matters listed in paragraph (b) of this section.

§ 563b.140 May I amend my plan of conversion?

You may amend your plan of conversion before you solicit proxies. After you solicit proxies, you may amend your plan of conversion only if OTS concurs.

Filing Requirements

§ 563b.150 What must I include in my application for conversion?

(a) Your application for conversion must include all of the following information.

(1) Your plan of conversion.

(2) Pricing materials meeting the requirements of § 563b.200(b).

(3) Proxy soliciting materials under § 563b.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 563b.255; and

(iii) Any additional proxy soliciting materials.

(4) An offering circular described in § 563b.300.

(5) The documents and information required by Form AC. You may obtain Form AC from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(6) Written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use.

(7) Any additional information OTS requests.

(b) OTS will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, or substantially incomplete, or that provides for unreasonable conversion expenses.

§ 563b.155 How do I file my application for conversion?

You must file seven copies of your application for conversion on Form AC. You must file the original and three conformed copies with the Applications Filing Room in Washington, and three conformed copies with the appropriate Regional Office at the addresses in § 516.1 of this chapter.

§ 563b.160 May I keep portions of my application for conversion confidential?

(a) OTS makes all filings under this part available to the public, but may keep portions of your application for conversion confidential under paragraph (b) of this section.

(b) You may request OTS to keep portions of your application confidential. To do so, you must separately bind and clearly designate as ''confidential'' any portion of your application for conversion that you deem confidential. You must provide a written statement specifying the grounds supporting your request for confidentiality. Your CRA Plan is not considered confidential information. The CRA portion of your application may not incorporate by reference information contained in the confidential portion of your application.

(c) OTS will determine whether confidential information must be available to the public under 5 U.S.C. 552 and part 505 of this chapter. OTS will advise you if it makes available to the public any information you designated as ''confidential.''

(d) If OTS issues a public statement with its decision on the application for conversion, OTS may comment on confidential submissions in the public statement without notifying you.

563b.165 How do I amend my application for conversion?

To amend your application for conversion, you must:

(a) File an amendment with an appropriate facing sheet;

(b) Number each amendment consecutively;

(c) Respond to all issues raised by OTS; and

(d) Demonstrate that the amendment conforms to all applicable regulations.

Notice of Filing of Application and Comment Process

§ 563b.180 How do I notify the public that I filed an application for conversion?

(a) You must publish a public notice of the application under the procedures in subpart B of part 516 of this chapter, except that you must publish your notice within three days before or after you file your application for conversion. You must simultaneously prominently post the notice in your home office and all branch offices. Your notice must include the following information.

(1) You filed an application for conversion with OTS.

(2) You delivered copies of the application to OTS and to the Regional Office, including the addresses of the applicable OTS offices.

(3) A statement that anyone may file written comments, including objections to the plan of conversion and materials supporting the objections, within 20 days. You must include instructions regarding how a person may file a comment.

(b) Promptly after publication, you must file four copies of any public notice, and an affidavit of publication from each publisher. You must file the original and one copy with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.1 of this chapter.

(c) If OTS does not accept your application for conversion under § 563b.200 and requires you to file a new application, you must publish and post a new notice and allow an additional 20 days for comment.

§ 563b.185 How may a person comment on my application for conversion?

Anyone may submit a written comment supporting or opposing your application for conversion with OTS. To do so, commenters must file within 20 days after you notify the public under § 563b.180. A commenter must file the original and one copy of any comments with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.1 of this chapter.

OTS Review of the Application for Conversion

§ 563b.200 What actions may OTS take on my application?

(a) OTS may approve your application for conversion only if:

(1) Your conversion complies with this part;

(2) You will meet your regulatory capital requirements under part 567 of this chapter after the conversion; and

(3) Your conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) OTS will review the appraisal required by § 563b.150(a)(2) in determining whether to approve your application. OTS will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to OTS, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if you ensure that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of your *pro forma* income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of your shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) OTS may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) You may not represent or imply that OTS approved the appraisal.

(c) OTS will review your compliance record under part 563e of this chapter and your business plan to determine how you will serve the convenience and needs of your communities after the conversion.

(1) Based on this review, OTS may approve your application, deny your application, or approve your application on the condition that you will improve your CRA performance or that you will address the particular credit or lending needs of the communities that you will serve.

(2) OTS may deny your application if your business plan does not demonstrate that your proposed use of conversion proceeds will help you to meet the credit and lending needs of the communities that you will serve.

(d) OTS may request that you amend your application if further explanation is necessary, material is missing or material must be corrected.

(e) OTS will deny your application if the application does not meet the requirements of this subpart, unless OTS waives the requirement under § 563b.5.

§ 563b.205 May a court review OTS's final action on my conversion?

(a) Any person aggrieved by OTS's final action on your application for

conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate or set aside the final OTS action. The aggrieved person must file the petition with the court within the later of 30 days after OTS publishes notice of OTS's final action in the **Federal Register** or 30 days after you mail the proxy statement to your members under § 563b.235.

Vote by Members

§ 563b.225 Must I submit the plan of conversion to my members for approval?

(a) After OTS approves your plan of conversion, you must submit your plan of conversion to your members for approval. You must obtain this approval at a special meeting, unless you are a state-chartered savings association and state law requires you to obtain approval at an annual meeting.

(b) Your members must approve your plan of conversion by a majority of the total outstanding votes, unless you are a state-chartered savings association and state law prescribes a higher percentage.

(c) Your members may vote in person or by proxy.

(d) You may notify eligible account holders or supplemental eligible account holders who are not voting members of your proposed conversion. You may include only the information in § 563b.135 in your notice.

§ 563b.230 Who is eligible to vote?

You determine members' eligibility to vote by setting a voting record date. You must set a voting record date that is not more than 60 days nor less than 20 days before your meeting, unless you are a state-chartered savings association and state law requires a different voting record date.

§ 563b.235 How must I notify my members of the meeting?

(a) You must notify your members of the meeting to consider your conversion by sending the members a proxy statement authorized by OTS.

(b) You must notify your members 20 to 45 days before your meeting, unless you are a state-chartered savings association and state law requires a different notice period.

(c) You must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If you are a federal association and the name of the beneficial holder is disclosed on your records; or

(2) If you are a state-chartered association and the beneficial holder possesses voting rights under state law.

§ 563b.240 What must I submit to OTS after the members' meeting?

Promptly after the members' meeting, you must file all of the following information with OTS:

(a) A certified copy of each adopted resolution on the conversion.

(b) The total votes eligible to be cast.

(c) The total votes represented in person or by proxy.

(d) The total votes cast in favor of and against each matter.

(e) The percentage of votes necessary to approve each matter.

(f) An opinion of counsel that:

(1) You conducted the members' meeting in compliance with all applicable state or federal laws and regulations; and

(2) You complied with all federal or state laws applicable to the conversion.

Proxy Solicitation

§ 563b.250 Who must comply with these proxy solicitation provisions?

(a) You must comply with these proxy solicitation provisions when you provide proxy soliciting material to members for the meeting to vote on your plan of conversion.

(b) Your members must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on your conversion, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on your behalf; or

(2) The member solicits proxies through newspaper advertisements after your board adopts the plan of conversion. The newspaper advertisement may include only the following information:

(i) Your name;

(ii) The reason for the advertisement;

(iii) The proposal or proposals to be voted upon;

(iv) Where a member may obtain a copy of the proxy soliciting material; and

(v) A request for your members to vote at the meeting.

§ 563b.255 What must the form of proxy include?

The form of proxy must include all of the following.

(a) A statement in bold face type stating whether management is soliciting the proxy.

(b) Blank spaces where the member must date and sign the proxy.

(c) Clear and impartial identification of each matter or group of related matters that members will vote upon. You must include any proposed charitable contribution as an item to be voted on separately.

(d) The phrase ''Revocable Proxy'' in bold face type (at least 18 point).

(e) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(g) The date, time, and the place of the meeting, when available.

(h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(i) A statement that management will vote the proxy in accordance with the member's specifications.

(j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 563b.260 May I use previously executed proxies?

You may not use previously executed proxies for the plan of conversion vote. If members consider your plan of conversion at an annual meeting, you may vote proxies obtained through other proxy solicitations only on matters not related to your plan of conversion.

§ 563b.265 How may I use proxies executed under this part?

You may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. You may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on your plan of conversion.

§ 563b.270 What must I include in my proxy statement?

(a) *Content requirements.* You must prepare your proxy statement in compliance with this part and Form PS. You may obtain Form PS from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(b) *Other requirements.* (1) OTS will review your proxy soliciting material when it reviews the application for conversion and will authorize the use of proxy soliciting material.

(2) You must provide an authorized written proxy statement to your members before you provide any other soliciting material. You must mail authorized proxy soliciting material to

your members within ten days after OTS authorizes the solicitation.

§ 563b.275 How do I file revised proxy materials?

(a) You must file revised proxy materials as an amendment to your application for conversion. *See* § 563b.155 for where to file.

(b) To revise your proxy soliciting materials, you must file:

(1) Seven copies of your revised proxy materials as required by Form PS;

(2) Seven copies of your revised form of proxy, if applicable; and

(3) Seven copies of any additional proxy soliciting material subject to § 563b.270, including press releases, personal solicitation instructions, radio or television scripts that you plan to use or furnish to your members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(c) You must mark four of the seven required copies to clearly indicate changes from the prior filing.

(d) You must file seven definitive copies of all proxy soliciting material, in the form in which you furnish the material to your members. You must file no later than the date that you send or give the proxy soliciting material to your members. You must indicate the date that you will release the materials.

(e) Unless OTS requests you to do so, you do not have to file copies of replies to inquiries from your members or copies of communications that merely request members to sign and return proxy forms.

§ 563b.280 Must I mail a member's proxy soliciting material?

(a) You must mail the member's authorized proxy soliciting material if:

(1) Your board of directors adopted a plan of conversion;

(2) A member requests in writing that you mail proxy soliciting material; and

(3) The member agrees to defray your reasonable expenses.

(b) As soon as practicable after you receive a request under paragraph (a) of this section, you must mail or otherwise furnish the following information to the member:

(1) The approximate number of members that you solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(2) The estimated cost of mailing the proxy soliciting material for the member.

(c) You must mail authorized proxy soliciting material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to you.

(d) You are not responsible for the content of a member's proxy soliciting material.

(e) A member may furnish other members its own proxy soliciting material, authorized by OTS, subject to these rules.

§ 563b.285 What solicitations are prohibited?

(a) *False or misleading statements.* (1) No one may use proxy soliciting material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(i) Is false or misleading with respect to any material fact;

(ii) Omits any material fact that is necessary to make the statements not false or misleading; or

(iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that OTS determined that proxy soliciting material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

(1) An undated or post-dated proxy;

(2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

§ 563b.290 What will OTS do if a solicitation violates these prohibitions?

(a) If a solicitation violates § 563b.285, OTS may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) OTS may also bring an enforcement action against the violator.

§ 563b.295 Will OTS require me to re-solicit proxies?

If you amend your application for conversion, OTS may require you to re-solicit proxies for your members' meeting as a condition of approval of the amendment.

Offering Circular

§ 563b.300 What must happen before OTS declares my offering circular effective?

(a) You must prepare and file your offering circular with OTS in compliance with this part and Form OC and, where applicable, part 563g of this chapter. Section 563b.155 governs where to file your offering circular. You may obtain Form OC from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

(b) You must condition your stock offering upon the members' approval of your plan of conversion.

(c) OTS will review the Form OC and may comment on the included disclosures and financial statements.

(d) You must file seven copies of each revised offering circular, final offering circular, and post-effective amendment to the final offering circular.

(e) OTS will not approve the adequacy or accuracy of the offering circular or the disclosures.

(f) After you satisfactorily address OTS's concerns, you must request OTS to declare your Form OC effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of your shares under § 563b.400.

§ 563b.305 When may I distribute the offering circular?

(a) You may distribute a preliminary offering circular at the same time as or after you mail the proxy statement to your members.

(b) You may not distribute an offering circular until OTS declares it effective. You must distribute the offering circular in accordance with this part.

(c) You must distribute your Form OC to persons listed in your plan of conversion within 10 days after OTS declares it effective.

§ 563b.310 When must I file a post-effective amendment to the offering circular?

(a) You must file a post-effective amendment to the offering circular with OTS when a material event, circumstance, or change of circumstance occurs.

(b) After OTS declares the post-effective amendment effective, you must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(c) Your post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless OTS approves a longer rescission period.

Offers and Sales of Stock

§ 563b.320 Who has priority to purchase my conversion shares?

You must offer to sell your shares in the following order.

(a) Eligible account holders.

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) Your community, your community and the general public, or the general public.

§ 563b.325 When may I offer to sell my conversion shares?

(a) You may offer to sell your conversion shares after OTS approves your conversion, authorizes your proxy statement, and declares your offering circular effective.

(b) The offer may commence at the same time you start the proxy solicitation of your members.

§ 563b.330 How do I price my conversion shares?

(a) You must sell your conversion shares at a uniform price per share and at a total price that is equal to the estimated *pro forma* market value of your shares after you convert.

(b) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in your offering circular.

(c) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in your offering circular.

(d) If OTS permits, you may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) The maximum price must be between $5 and $50 per share.

(f) You must include the estimated price in any preliminary offering circular.

§ 563b.335 How do I sell my conversion shares?

(a) You must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. You may either send the order forms with your offering circular or after you distribute your offering circular.

(b) You may sell your conversion shares in a community offering, a public offering, or both. You may begin the community offering, the public offering, or both at any time during the subscription offering.

(c) You may pay underwriting commissions (including underwriting discounts). OTS may object to the payment of unreasonable commissions. You may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, you may pay an underwriter a consulting fee. OTS may object to the payment of unreasonable consulting fees.

(d) If you conduct the community offering, the public offering, or both at the same time as the subscription offering, you must fill all subscription orders first.

(e) You must prepare your order form in compliance with this part and Form OF. You may obtain Form OF from OTS Washington and Regional Offices (see § 516.1 of this chapter) and OTS's website (www.ots.treas.gov).

§ 563b.340 What sales practices are prohibited?

(a) In connection with offers, sales, or purchases of conversion shares under this part, you and your directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) During your conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for your conversion shares, or the underlying securities, to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of your conversion shares from anyone but you; or

(3) Knowingly acquire more than the maximum purchase limitations established in your plan of conversion.

(c) The restrictions in paragraphs (b)(1) and (b)(2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on your behalf, that makes the offer with a view toward public resale; or

(2) One or more of your tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of your equity securities in the aggregate.

§ 563b.345 How may a subscriber pay for my conversion shares?

(a) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or by a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, you may not assess a penalty for the withdrawal.

(b) You may not extend credit to any person to purchase your conversion shares.

§ 563b.350 Must I pay interest on payments for conversion shares?

(a) You must pay interest from the date you receive a payment for conversion shares until the date you complete or terminate the conversion. You must pay interest at no less than the passbook rate for amounts paid in cash, check, or money order.

(b) If a subscriber withdraws money from a savings account to purchase conversion shares, you must pay interest on the payment until you complete or terminate the conversion as if the withdrawn amount remained in the account.

(c) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, you may cancel the certificate and pay interest at no less than your passbook rate on any remaining balance.

§ 563b.355 How many subscription rights must I give to each eligible account holder and each supplemental eligible account holder?

(a) You must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 563b.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: the total number of conversion shares that you will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. You must round down the product of this multiplied fraction to the next whole number.

(b) You must give subscription rights to purchase shares to each supplemental

eligible account holder in the same amount as described in paragraph (a) of this section, except that you must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 563b.360 Are my officers, directors, and their associates eligible account holders?

Your officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, you must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 563b.365 May other voting members purchase conversion shares in the conversion?

(a) You must give rights to purchase your conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. You must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 563b.395; or

(2) One-tenth of one percent of the total stock offering.

(b) You must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 563b.370 Does OTS limit the aggregate purchases by officers, directors, and their associates?

(a) When you convert, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total stock offering:

Institution size	Officer and director purchases (percent)
$ 50,000,000 or less	35
$ 50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(b) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

§ 563b.375 How do I allocate my conversion shares if my shares are oversubscribed?

(a) If your conversion shares are oversubscribed by your eligible account holders, you must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) If your conversion shares are oversubscribed by your supplemental eligible account holders, you must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) If a person is an eligible account holder and a supplemental eligible account holder, you must include the eligible account holder's allocation in determining the number of conversion shares that you may allocate to the person as a supplemental eligible account holder.

(d) For conversion shares that you do not allocate under paragraphs (a) and (b) of this section, you must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. You must describe this method of allocation in your plan of conversion.

(e) If shares remain after you have allocated shares as provided in paragraphs (a) and (b) of this section, and if your voting members oversubscribe you must allocate your conversion shares among those members equitably. You must describe the method of allocation in your plan of conversion.

§ 563b.380 May my employee stock ownership plan purchase conversion shares?

(a) Your tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of your conversion shares.

(b) If OTS approves a revised stock valuation range as described in § 563b.330(e), and the final conversion stock valuation range exceeds the former maximum stock offering range, you may allocate conversion shares to your tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) If your tax-qualified employee stock ownership plan is not able to purchase stock in the offering, it may, with prior OTS approval and appropriate disclosure in your offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(d) You may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless OTS objects on supervisory grounds.

§ 563b.385 May I impose any purchase limitations?

(a) You may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to between one percent and five percent of the total stock sold. If you set a limit of five percent, you may provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase more than five percent as long as the total amount that the subscribers purchase over five percent does not in the aggregate exceed 10 percent of the total stock offering.

(b) You may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a $500 subscription or 25 shares.

(c) In setting purchase limitations under this section, you may not aggregate conversion shares attributed to a person in your tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 563b.390 Must I provide a purchase preference to persons in my local community?

(a) In your subscription offering, you may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in your local community.

(b) In your community offering, you must give a purchase preference to natural persons residing in your local community.

§ 563b.395 What other conditions apply when I offer conversion shares in a community offering, a public offering, or both?

(a) You must offer and sell your stock to achieve a widespread distribution of the stock.

(b) If you offer shares in a community offering, a public offering, or both, you must first fill orders for your stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. You must allocate any remaining shares on an equal number of shares per order basis until you fill all orders.

Completion of the Offering

§ 563b.400 When must I complete the sale of my stock?

You must complete all sales of your stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 563b.405.

§ 563b.405 How do I extend the offering period?

(a) You must request, in writing, an extension of any offering period.

(b) OTS may grant extensions of time to sell your shares. OTS will not grant any single extension of more than 90 days.

(c) If OTS grants your request for an extension of time, you must provide a post-effective amendment to the offering circular under § 563b.310 to each person who subscribed for or ordered stock. Your amendment must indicate that OTS extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

Completion of the Conversion

§ 563b.420 When must I complete my conversion?

(a) You must select a date for the completion of the conversion that is within 24 months of the date that your members approve the conversion. Once OTS approves the conversion, it will not permit extension of the completion date.

(b) Your conversion is complete on the date that you accept the offers for your stock.

§ 563b.425 Who may terminate the conversion?

(a) Your members may terminate the conversion by failing to approve the conversion at your members' meeting.

(b) You may terminate the conversion before your members' meeting.

(c) You may terminate the conversion after the members' meeting only if OTS concurs.

§ 563b.430 What happens to my old charter?

(a) If you are a federally chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS to amend your charter and bylaws consistent with part 552 of this chapter, as part of your application for conversion. You may only include OTS pre-approved anti-takeover provisions in your amended charter and bylaws. *See* 12 CFR 552.4(b)(8). OTS will state the effective date of your charter amendments in its approval of the conversion.

(b) If you are a state-chartered mutual savings association or savings bank, and you convert to a federally chartered stock savings association or savings bank, you must apply to OTS for a new charter and bylaws consistent with part 552 of this chapter. You may only include OTS pre-approved anti-takeover provisions in your charter and bylaws. *See* 12 CFR 552.4(b)(8). OTS will state the effective date of your charter amendments with its approval of the conversion.

(c) If you are a federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association under this part, your mutual charter terminates when the state issues a stock charter. You must promptly file a copy of your new state stock charter with OTS. If you were a federally chartered mutual savings association or savings bank and you convert to a state-chartered stock savings association, you must also surrender your federal charter to OTS for cancellation promptly after the state issues your charter.

(d) Your new or amended charter must require you to establish and maintain a liquidation account for eligible and supplemental eligible account holders under § 563b.450.

§ 563b.435 What happens to my corporate existence after conversion?

Your corporate existence will continue following your conversion, unless you convert to a state-chartered stock savings association and state law prescribes otherwise.

§ 563b.440 What voting rights must I provide to stockholders after the conversion?

You must provide your stockholders with exclusive voting rights, except as provided in § 563b.445(c).

§ 563b.445 What must I provide my savings account holders?

(a) You must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before your conversion.

(b) You must provide a liquidation account for each eligible and supplemental eligible account holder under § 563b.450.

(c) If you are a state-chartered savings association and state law requires you to provide voting rights to savings account holders or borrowers, your charter must:

(1) Limit these voting rights to the minimum required by state law; and

(2) Require you to solicit proxies from the savings account holders and borrowers in the same manner that you solicit proxies from your stockholders.

Liquidation Account

§ 563b.450 What is a liquidation account?

(a) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in your net worth at the time of conversion. You must maintain a sub-account to reflect the interest of each account holder.

(b) Before you may provide a liquidation distribution to common stockholders, you must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) You may not record the liquidation account in your financial statements. You must disclose the liquidation account in the footnotes to your financial statements.

§ 563b.455 What is the initial balance of the liquidation account?

The initial balance of the liquidation account is your net worth in the statement of financial condition included in the final offering circular.

§ 563b.460 How do I determine the initial balances of liquidation sub-accounts?

(a)(1) You determine the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(2) You determine the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility

record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(3) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, you must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(b) You may not increase the initial sub-account balances. You must decrease the initial balance under § 563b.470 as depositors reduce or close their accounts.

§ 563b.465 Do account holders retain any voting rights based on their liquidation sub-accounts?

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 563b.470 Must I adjust liquidation sub-accounts?

(a)(1) You must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is your fiscal year end, after the relevant eligibility record dates is less than:

(i) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(ii) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(2) The reduction must be proportionate to the reduction in the deposit balance.

(b) If you reduce the balance of a liquidation sub-account, you may not subsequently increase it if the deposit balance increases.

(c) You are not required to adjust the liquidation account and sub-account balances at each annual closing date if you maintain sufficient records to make the computations if a liquidation occurs.

(d) You must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same Social Security number.

(e) If there is a complete liquidation, you must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

§ 563b.475 What is a liquidation?

(a) A liquidation is a sale of your assets and settlement of your liabilities with the intent to cease operations and close. Upon liquidation, you must return your charter to the governmental agency that issued it. The government agency must cancel your charter.

(b) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If you are involved in such a transaction, the surviving institution must assume the liquidation account.

§ 563b.480 Does the liquidation account affect my net worth?

No. You may use or apply any of your net worth accounts notwithstanding the existence of the liquidation account, except as provided in § 563b.520.

§ 563b.485 What provision must I include in my new federal charter?

If you convert to federal stock form, you must include the following provision in your new charter: ''*Liquidation Account.* Under OTS regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of_____. If the association undergoes a complete liquidation, it must comply with OTS regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights.''

Post-Conversion

§ 563b.500 May I implement a stock option plan or management or employee stock benefit plan?

(a) You may implement a stock option plan or management or employee stock benefit plan within 12 months after your conversion, if you meet all of the following requirements.

(1) You disclose the plans in your proxy statement and offering circular and indicate in the offering circular that there will be a separate vote on the plans at least six months after the conversion.

(2) You do not grant stock options under your stock option plan in excess of 10 percent of shares that you issued in the conversion.

(3) You do not permit your management stock benefit plans, in the aggregate, to hold more than three percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit you to establish a management stock benefit plan that holds up to four percent of the shares that you issued in the conversion.

(4) You do not permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold more than 10 percent of the shares that you issued in the conversion. However, if you have tangible capital of 10 percent or more following the conversion, OTS may permit your tax-qualified employee stock benefit plan(s) and your management stock benefit plans, in the aggregate, to hold up to 12 percent of the shares that you issued in the conversion.

(5) No individual receives more than 25 percent of the shares under any plan.

(6) Your directors who are not your employees do not receive more than five percent of the shares of any plan individually, or 30 percent of the shares of any plan in the aggregate.

(7) Your shareholders approve each plan by a majority of the total votes eligible to be cast at a duly called meeting before you establish or implement the plan. You may not hold this meeting until six months after your conversion. If you are a subsidiary of a mutual holding company, a majority of the total votes eligible to be cast (other than your parent mutual holding company) must approve each plan before you may establish or implement the plan.

(8) When you distribute proxies or related material to shareholders in connection with the vote on a plan, you state that the plan complies with OTS regulations, and that OTS does not endorse or approve the plan in any way. You may not make any written or oral representation to the contrary.

(9) You do not grant stock options at less than the market price at the time of grant.

(10) You do not use stock issued at the time of conversion to fund management or employee stock benefit plans.

(11) Your plan does not begin to vest earlier than one year after your shareholders approve the plan, and does not vest at a rate exceeding 20 percent a year.

(12) Your plan permits accelerated vesting only for disability or death, or if you undergo a change of control.

(13) Your plan provides that your executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in § 565.4), is subject to OTS enforcement action, or receives a capital directive under § 565.7.

(14) You file a copy of the approved stock option plan or management or employee stock benefit plan with OTS and certify to OTS in writing that the

plan approved by the shareholders is the same plan that you filed with, and disclosed in, the proxy materials.

(15) You file the plan and the certification with OTS within five calendar days after your shareholders approve the plan.

(b) You may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to your stock in stock option plans or management or employee stock benefit plans under this section.

(c) If the plan is adopted more than one year following your conversion, any material amendments to the requirements in paragraph (a) of this section must be ratified by your shareholders.

§ 563b.505 May my directors, officers, and their associates freely trade shares?

(a) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) You must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) You must instruct your stock transfer agent about the transfer restrictions in this section.

(d) For three years after you convert, your officers, directors, and their associates may purchase your stock only from a broker or dealer registered with the Securities and Exchange Commission. However, your officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of your outstanding stock, and may purchase stock through any of your management or employee stock benefit plans.

§ 563b.510 May I repurchase shares after conversion?

(a) You may not repurchase your shares in the first year after the conversion except:

(1) You may make open market repurchases of up to five percent of your outstanding stock in the first year after the conversion if you file a notice under § 563b.515(a) and OTS does not disapprove your repurchase. OTS will not approve such repurchases unless the repurchase meets the standards in § 563b.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) You may repurchase qualifying shares of a director or conduct an OTS approved repurchase made to all shareholders of your association.

(b) After the first year, you may repurchase your shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) All stock repurchases are subject to the following restrictions.

(1) You may not repurchase your shares if the repurchase will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450. You must comply with the capital distribution requirements at part 563, subpart E of this chapter.

(2) The restrictions on share repurchases apply to a charitable organization under § 563b.550. You must aggregate purchases of shares by the charitable organization with your repurchases.

§ 563b.515 What information must I provide to OTS before I repurchase my shares?

(a) To repurchase stock in the first year following conversion, you must file a written notice with the OTS. You must provide the following information:

(1) Your proposed repurchase program;

(2) The effect of the repurchases on your regulatory capital; and

(3) The extraordinary circumstances necessitating the repurchases.

(b) You must file your notice with your Regional Director, with a copy to the Chief Counsel's Office, Business Transactions Division, at least ten days before you begin your repurchase program.

(c) You may not repurchase your shares if OTS disapproves your repurchase program. OTS will disapprove your repurchase program if:

(1) Your repurchase program will adversely affect your financial condition;

(2) You fail to submit sufficient information to evaluate your proposed repurchases;

(3) You do not demonstrate extraordinary circumstances and a compelling and valid business purpose for the shares repurchases; or

(4) Your repurchase program would be contrary to other applicable regulations.

§ 563b.520 May I declare or pay dividends after I convert?

(a) You may declare or pay a dividend on your shares after you convert, unless the dividend will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450.

(b) You must comply with all capital requirements under part 567 of this chapter after you declare or pay dividends.

(c) You must comply with the capital distribution requirements under part 563, subpart E of this chapter.

(d) You may not return any capital to purchasers in the first year following conversion. You may only return capital to purchasers after the first year, if the return of capital is consistent with your business plan.

§ 563b.525 Who may acquire my shares after I convert?

(a) For three years after you convert, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of your equity securities without OTS's prior written approval. If a person violates this prohibition, you may not permit the person to vote shares in excess of ten percent, and may not count these shares in any shareholder vote.

(b) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of your stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and (b) of this chapter. OTS will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to you, to the underwriters, or to a selling group acting on your behalf.

(2) Unless OTS objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as your ownership may acquire or offer to acquire more than ten percent of your common stock, if it makes the offer or

acquisition more than one year after you convert.

(4) One or more of your tax-qualified employee stock benefit plans may acquire your shares, if the plan or plans do not beneficially own more than 25 percent of any class of your shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain OTS approval under paragraph (a) of this section, if the acquiror files an application under part 574 of this chapter that specifically addresses the criteria listed under paragraph (d) of this section and you do not oppose the proposed acquisition.

(d) OTS may deny an application under paragraph (a) of this section if the proposed acquisition:

(1) Is contrary to the purposes of this part;

(2) Is manipulative or deceptive;

(3) Subverts the fairness of the conversion;

(4) Is likely to injure you;

(5) Is inconsistent with your plan to meet the credit and lending needs of your proposed market area;

(6) Otherwise violates law or regulation; or

(7) Does not prudently deploy your conversion proceeds.

§ 563b.530 What other requirements apply after I convert?

After you convert, you must:

(a) Promptly register your shares under the Securities Exchange Act of 1934. You may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for your shares. A market maker for a security is a dealer who:

(1) Regularly publishes *bona fide* competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes *bona fide* competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use your best efforts to list your shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that OTS requires.

Contributions to Charitable Organizations

§ 563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?

You may contribute some of your conversion shares or proceeds to a charitable organization if:

(a) Your plan of conversion provides for the proposed contribution;

(b) Your members approve the proposed contribution; and

(c) The IRS approves the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 563b.555 How do my members approve a charitable contribution?

At the meeting to consider your conversion, your members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds.

§ 563b.560 How much may I contribute to a charitable organization?

You may contribute a reasonable amount of conversion shares or proceeds to a charitable organization if your contribution will not exceed limits for charitable deductions under the Internal Revenue Code, and OTS does not object on supervisory grounds. Except in extraordinary circumstances, OTS will not object on supervisory grounds if you contribute an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 563b.565 What must the charitable organization include in its organizational documents?

The charitable organization's charter and bylaws (or trust agreement), gift instrument, and operating plan must provide that:

(a) The charitable organization's purpose is to serve and make grants in your local community;

(b) As long as the charitable organization controls shares, you must consider those shares as voted in the same ratio as all other shares voted on each proposal considered by your shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from your local community. This director may not be your officer, director, or employee, or your affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from your board of directors.

§ 563b.570 How do I address conflicts of interest involving my directors?

(a) A person who is your director, officer, or employee, or a person who has the power to direct your management or policies, or otherwise owes a fiduciary duty to you (for example, holding company directors) and who will serve as an officer, director, or employee of the charitable organization, is subject to § 563.200 of this chapter. *See* Form AC (Exhibit 9) for further information on operating plans and conflict of interest plans.

(b) Before your board of directors may adopt a plan of conversion that includes a charitable organization, you must identify your directors that will serve on the charitable organization's board. These directors may not participate in your board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 563b.575 What other requirements apply to charitable organizations?

(a) The charitable organization's charter and bylaws (or trust agreement) and the gift instrument for the contribution must provide that:

(1) OTS may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that OTS imposes;

(3) The charitable organization must provide OTS with a copy of the annual report that the charitable organization submitted to the IRS;

(4) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(5) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) You must include the following legend in the stock certificates of shares that you contribute to the charitable organization or that the charitable organization otherwise acquires: ''The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization.''

(c) OTS may review the compensation paid to charitable organization directors

(or trustees) who are not your directors, employees, or affiliates.

(d) After you complete your stock offering, you must submit four executed copies of the following documents to the OTS Applications Filing Room in Washington, and three executed copies to the OTS Regional Office: the charitable organization's charter and bylaws (or trust agreement), operating plan, conflict of interest policy, and the gift instrument for your contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 563b.600 What does this subpart do?

(a) You must comply with this subpart to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

§ 563b.605 How may I conduct a voluntary supervisory conversion?

(a) You may sell your shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) You may convert to stock form by merging into an interim federal-or state-chartered stock association.

(c) You may sell your shares directly to an acquirer, who may be a person, company, depository institution, or depository institution holding company.

(d) You may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 563b.610 Do my members have rights in a voluntary supervisory conversion?

Your members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless OTS provides otherwise. Your members may have interests in a liquidation account, if one is established.

Eligibility

§ 563b.625 When is a SAIF-insured savings association eligible for a voluntary supervisory conversion?

(a)(1) You may be eligible to convert under this subpart if:

(i) You are a SAIF-insured savings association;

(ii)You are significantly undercapitalized (or you are undercapitalized and a standard conversion that would make you adequately capitalized is not feasible); and

(iii) You will be a viable entity following the conversion.

(2) You will be a viable entity following the conversion if you satisfy all of the following.

(i) You will be adequately capitalized as a result of the conversion.

(ii) You, your proposed conversion, and your acquirer(s) comply with applicable supervisory policies.

(iii) The transaction is in your best interest, and the best interest of the federal deposit insurance funds, and the public.

(iv) The transaction will not injure or be detrimental to you, the federal deposit insurance funds, or the public interest.

(b) If you are a SAIF-insured savings association, you may be eligible to convert under this subpart and section 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(p) if one of the following occurs:

(1) Severe financial conditions threaten your stability and a conversion is likely to improve your financial condition;

(2) FDIC will assist you under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(3) You are in receivership and a conversion will assist you.

§ 563b.630 When is a BIF-insured savings association eligible for a voluntary supervisory conversion?

If you are a BIF-insured savings association you may be eligible to convert under this subpart if:

(a) FDIC certifies under section 5(o)(2)(c) of the HOLA that severe financial conditions threaten your stability and that the voluntary supervisory conversion is likely to improve your financial condition, and OTS concurs with this certification; or

(b) You meet the following conditions:

(1) Your liabilities exceed your assets, as calculated under generally accepted accounting principles, assuming you are a going concern; and

(2) You will issue a sufficient amount of permanent capital stock to meet your applicable FDIC capital requirement immediately upon completion of the conversion, or FDIC determines that you will achieve an acceptable capital level within an acceptable time period.

Plan of Supervisory Conversion

§ 563b.650 What must I include in my plan of voluntary supervisory conversion?

A majority of your board of directors must adopt a plan of voluntary supervisory conversion. You must include all of the following information in your plan of voluntary supervisory conversion.

(a) Your name and address.

(b) The name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares and a description of that purchaser's relationship to you.

(c) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that you will issue.

(d) The number and percentage of shares that each investor will purchase.

(e) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(f) A description of any liquidation account.

(g) Certified copies of all resolutions of your board of directors relating to the conversion.

Voluntary Supervisory Conversion Application

§ 563b.660 What must I include in my voluntary supervisory conversion application?

You must submit a voluntary supervisory conversion application to OTS under this subpart. You must include all of the following information and documents in your conversion application.

(a) *Eligibility.* (1) Evidence establishing that you meet the eligibility requirements under §§ 563b.625 or 563b.630.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(3) An opinion of independent counsel indicating that applicable state law authorizes the voluntary supervisory conversion, if you are a state-chartered savings association converting to state stock form.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 563b.650.

(c) *Business plan.* A business plan that complies with § 563b.105, where required by OTS.

(d) *Financial data.* (1) Your most recent audited financial statements and Thrift Financial Report. You must

explain how your current capital levels make you eligible to engage in a voluntary supervisory conversion under §§ 563b.625 or 563b.630.

(2) A description of your estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to OTS and the non-cash asset must meet all other OTS policy guidelines. *See* Thrift Activities Handbook Section 110 for guidelines.

(4) *Pro forma* financial statements that reflect the effects of the transaction. You must identify your tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. You must prepare your *pro forma* statements in conformance with OTS regulations and policy.

(e) *Proposed documents.* (1) Your proposed charter and bylaws.

(2) Your proposed stock certificate form.

(f) *Agreements.* (1) A copy of any agreements between you and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. You must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related applications.* (1) All filings required under the securities offering rules of 12 CFR parts 563b and 563g.

(2) Any required Holding Company Act application, Control Act notice, or rebuttal submission under part 574 of this chapter, including prior-conduct certifications under Regulatory Bulletin 20.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for Federal Home Loan Bank membership, and FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under federal or state banking laws for all transactions related to your conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by OTS, copies of the applications and related documents.

(h) *Waiver request.* A description of any of the features of your application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

OTS Review of the Voluntary Supervisory Conversion Application

§ 563b.670 Will OTS approve my voluntary supervisory conversion application?

OTS will generally approve your application to engage in a voluntary supervisory conversion unless it determines:

(a) You do not meet the eligibility requirements for a voluntary supervisory conversion under §§ 563b.625 or 563b.630 or because the proceeds from the sale of your conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to you or the Federal deposit insurance funds or is contrary to the public interest;

(c) You or your acquirer, or the controlling parties or directors and officers of you or your acquirer, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) You fail to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, OTS generally will not approve employment contracts of more than one year for your existing management.

§ 563b.675 What conditions will OTS impose on an approval?

(a) OTS will condition approval of a voluntary supervisory conversion application on all of the following.

(1) You must complete the conversion stock sale within three months after

OTS approves your application. OTS may grant an extension for good cause.

(2) You must comply with all filing requirements of Parts 563b and 563g of this chapter.

(3) You must submit an opinion of independent legal counsel indicating that the sale of your shares complies with all applicable state securities law requirements.

(4) You must comply with all applicable laws, rules, and regulations.

(5) You must satisfy any other requirements or conditions OTS may impose.

(b) OTS may condition approval of a voluntary supervisory conversion application on either of the following:

(1) You must satisfy any conditions and restrictions OTS imposes to prevent unsafe or unsound practices, to protect the deposit insurance funds and the public interest, and to prevent potential injury or detriment to you before and after the conversion. OTS may impose these conditions and restrictions on you (before and after the conversion), your acquirer, and controlling parties, directors and officers of you or your acquirer; or

(2) You must infuse a larger amount of capital, if necessary for safety and soundness reasons.

Offers and Sales of Stock

§ 563b.680 How do I sell my shares?

If you convert under this subpart, you must offer and sell your shares under Part 563g of this chapter.

Post-Conversion

§ 563b.690 Who may not acquire additional shares after the voluntary supervisory conversion?

For three years after the completion of a voluntary supervisory conversion, neither you nor any of your controlling shareholder(s) may acquire shares from minority shareholders without OTS's prior approval.

PART 575—MUTUAL HOLDING COMPANIES

2. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.2 [Amended]

3. Section 575.2(a) is amended by removing the phrase ''12 CFR 563b.2'', and by adding in lieu thereof the phrase ''563b.25 of this chapter''.

§ 575.4 [Amended]

4. Section 575.4(c)(2) is amended by removing the phrase ''economical home financing'', and by adding in lieu thereof the phrase ''the credit and lending needs of your proposed market area''.

5. Section 575.7 is amended by:

a. Adding a new first sentence to paragraph (a);

b. Removing, in paragraph (a)(7), the phrase ''§ 563b.11 of this chapter'', and by adding in lieu thereof the phrase ''§ 563b.200(c) of this chapter'';

c. Removing, in paragraph (b)(1), the phrase '' § 563b.7'' where it appears in the first and second sentences, and by adding in lieu of both phrases the phrase ''part 563b of this chapter'';

d. Removing, in paragraph (b)(2), the phrase ''§ 563b.7(c)'', and by adding in lieu thereof the phrase ''§ 563b.330''.

e. Removing, in paragraph (d)(6)(i), the phrase ''12 CFR 563b.102'', and by adding in lieu thereof the phrase ''Form OC'';

f. Adding new paragraphs (d)(7) and (d)(8);

g. Removing, in paragraph (e), the phrase ''§§ 563b.3 through 563b.8 of this chapter'', and adding in lieu thereof the phrase ''12 CFR part 563b''.

The additions read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) *Approval requirements.* Before any stock issuance, a savings association subsidiary of a mutual holding company must submit a business plan in accordance with the provisions of §§ 563b.105 through 563b.115 of this chapter. A savings association subsidiary may not submit a notice to reorganize if OTS objects to the business plan.

* * * * *

(d) * * *

(7) Notwithstanding the restrictions in paragraph (d)(6)(ii) of this section, a savings association subsidiary of a mutual holding company may issue stock as part of a stock benefit plan to any insider, associate of an insider, tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company, if written notice is made to the OTS at least 30 days prior to the stock issuance and OTS does not object to the subsequent stock issuance.

(8) You may contribute a reasonable amount of shares or proceeds to a charitable organization that complies with §§ 563b.550 to 563b.575 of this chapter. In the case of a mutual holding company stock issuance no more than two percent of the savings association or subsidiary holding company stock may be contributed to the charitable organization.

* * * * *

6. Section 575.8 is amended by:

a. Removing, in paragraph (a) introductory text, the phrase ''§ 563b.27(a)'', and by adding in lieu thereof the phrase ''§ 563b.650'';

b. Revising paragraph (a)(7);

c. Removing paragraph (a)(8);

d. Redesignating paragraphs (a)(9) through (a)(21) as paragraphs (a)(8) through (a)(20), respectively;

e. Amending newly designated paragraph (a)(8) by removing the phrase ''12 CFR 563b.102'', and by adding in lieu thereof the phrase ''Form OC'';

f. Adding new paragraph (b)(5); and

g. Adding a new paragraph (b)(6).

The additions and revisions read as follows:

§ 575.8 Contents of Stock Issuance Plans.

(a) * * *

(7)(i) When you issue common or preferred stock, your officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of your total common or preferred stock offering, respectively, held by persons other than the mutual holding company:

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(ii) The purchase limitations in this section do not apply to shares held in tax-qualified or non-tax-qualified employee stock benefit plans that are attributable to your officers, directors, and their associates.

* * * * *

(b) * * *

(5) Provide that the association may adopt a stock benefit plan at the time of issuance if purchasers are given the opportunity to vote for or against the plan on the stock order form, and provided no shares may be granted for six months after the stock issuance.

(6) Provide that stock benefit plans for insiders may issue 49 percent of the amount of stock that is available under a plan subject to § 563b.500, provided that the mutual holding company holds more than 50 percent of the savings association's total outstanding common stock.

7.Section 575.11 is amended by:

a. Removing, in paragraphs (c)(1) and (c)(2) the phrases ''§ 563b.3(g)(1)'' or ''§ 563b.3(g)(3)'' wherever they appear, and by adding in lieu thereof the phrase ''§ 563b.510'';

b. Adding, in paragraph (e), after the phrase ''stock issuance'' the phrase '', and OTS does not object to the subsequent stock issuance''; and

c. Adding new paragraph (i).

The addition reads as follows:

§ 575.11 Operating restrictions.

* * * * *

(i) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

8. Section 575.13 is amended by removing, in paragraph (c)(2), the phrase ''§ 563b.8 of this chapter'', and by adding in lieu thereof the phrase ''§ 563b.150 of this chapter'', and by revising paragraph (a)(1) to read as follows:

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 563b.225 to 563b.290 and 563b.25 to 563b.35 of this chapter shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. OTS must authorize all proxy materials used in connection with such solicitations. Proxy materials must be in the form and contain the information specified in §§ 563b.255 and 563b.270 of this chapter and Form PS, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.280 of this chapter. File proxies and proxy statements in accordance with § 563b.155 of this chapter and address them to the Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.1(a) of this chapter. For purposes of this paragraph (a)(1) the term *conversion* as it appears in the provisions of part 563b of this chapter cited above in this paragraph (a)(1) refers to *the reorganization* or *the stock issuance* as appropriate.

* * * * *

Dated: June 20, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

Appendix A—Form AC—Application for Conversion

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form AC—Application for Conversion

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide OTS with all necessary information to evaluate the application for conversion to meet all agency safety and soundness requirements. *See* Part 563b.

Public reporting burden for this collection of information is estimated to average 299 hours if not creating a foundation and 309 hours if creating a foundation, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you

are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form AC—Application for Conversion

Office of Thrift Supervision 1700 G Street, NW., Washington, DC 20552

Application for Conversion

_____

(Name of Applicant in charter) (Docket No.)

_____

(Street address of Applicant)

_____

(City, State and Zip Code)

Index to Items

General Instructions

A. Use of Form AC

You must use Form AC to seek OTS approval of a conversion from the mutual to the stock form of organization under 12 CFR part 563b. You must indicate on the cover if you are filing using Regulation S–B.

B. Application of Rules and Regulations

You should follow the general requirements in this section when you prepare and file this Form AC and all other forms required under 12 CFR part 563b.

(1) *Method of preparation.* In your applications, you must furnish information in item-and-answer form, and must include the captions on the form. You may omit the text of items and instructions. In a proxy statement or offering circular, you may present the required information in any order and omit the captions and text of all items and instruction. You must not present the information in a way that obscures any of the required information or other information necessary to keep the required information from being incomplete or misleading. Where an item requires you to provide information in tabular form, you must provide the information substantially in the tabular form specified in the item.

You must set out all information in the plan of conversion, proxy statement or offering circular under appropriate headings that reasonably indicate the principal subject matter. Except for financial statements and other tabular data, you must present all information in reasonably short paragraphs or sections. You must set out financial statements, including interim financial statements, in comparative form, and must include all notes and the accountants' certificate or certificates. You must follow 12 CFR 563c.1, which governs the certification, form, and content of financial statements, including the basis of consolidation.

In a proxy statement or offering circular, you must present all information in a clearly understandable format. The reader should not have to refer to the OTS form or 12 CFR part 563b to understand the document. You must include a reasonably detailed table of contents in each proxy statement and offering circular.

In every application, you must include a cross-reference sheet showing where the responses to each item of the appropriate form are located in the proxy statement and offering circular. In the cross-reference sheet, you must state where any item is inapplicable, or where you omitted an answer because it was no.

(2) *Additional information.* In addition to the information required under 12 CFR part 563b, you must include any material information necessary to make the required statements, in the light of the circumstances under which you have made them, not misleading.

(3) *Information unknown or not reasonably available.* You must provide information to the extent you know the information or it is reasonably available to you. You may omit any required information that you do not know or is not reasonably available to you. You must explain why such information is not known or reasonably available to you. Information is not reasonably available if obtaining it would involve an unreasonable effort or expense, or if it rests peculiarly within the knowledge of another person who is not your affiliate. You must provide all information on the subject that you possess or can acquire without unreasonable effort or expense, together with the sources of the information.

(4) *Incorporation by reference.* If an item in an application calls for certain information and the proxy statement or offering circular does not require you to include it, you may incorporate the information by reference from any part of the application, including exhibits, in the answer, or partial answer, to the item. In a proxy statement or offering circular, you may not incorporate information by reference unless you attach, summarize, or outline the document containing the information. To summarize or outline a document, you must make a brief statement of the most important provisions of the document. In addition, you may incorporate by reference particular items, sections, or paragraphs of any exhibit, and your summary or outline may be qualified in its entirety by the reference. In an offering circular, you may incorporate by reference information from a proxy statement that you have delivered. You do not need to summarize or outline the information. If you incorporate material by reference you must clearly identify the material in the reference. You must expressly state that the specified matter is incorporated by reference at the particular place in the application where the information is required. You may not incorporate information by reference if the incorporation would render the statement incomplete, unclear or confusing.

(5) *Signatures Required.* The following individuals must manually sign at least two copies of every application and every amendment to an application that you file with OTS:

(a) Your duly authorized representative.
(b) Your principal executive officer.
(c) Your principal financial officer.
(d) Your principal accounting officer.
(e) At least two-thirds of your directors.

(6) *Consents of persons about to become directors.* If you indicate in a proxy statement or offering circular that a person is about to become a director, and that person has not signed your application, you must file that person's written consent to the application with the appropriate form.

(7) *Consents of experts.* If you indicate that an accountant, attorney, investment banker, appraiser, or other professional prepared, reviewed, passed upon, or certified any part of an application, or any report or valuation used in connection with the application, you must file the written consent of that person to use their name in connection with the stated action with the application. If you quote or summarize any portion of a report of an expert in any filing under 12 CFR part 563b, you must file a written consent of the expert that expressly states that the expert consents to the quotation or summarization. All written consents must be dated and signed manually by the expert. You must file a list of consents with the application. If the expert's report contains his or her consent, you must refer to the report containing the consent in your list. You must file a new consent for any accounting amendment.

(8) *Date of filing.* Your documents are filed as of the date the last OTS office where they are filed receives them, and you paid any applicable fee.

(9) *Amendments.* You must file all amendments to any application with an appropriate facing sheet. You must number your amendments consecutively in the order in which you file them. You must comply with all regulations applicable to the original application.

Item 1. Form of Application

You must include the following form in your application for approval of the plan of conversion. You must set out the names and titles of the officers and directors below their signatures:

The undersigned applies for approval to convert into a stock association. We have attached a statement of the proposed plan of conversion and other information and exhibits as required by 12 CFR Part 563b.

In submitting this application, we understand and agree that, if OTS requires further examinations or appraisals, OTS will conduct or approve the examination or appraisal at our expense. We will pay the costs as computed by OTS.

At least two-thirds of the board of directors approved the application. By filing this application, the undersigned officers and directors severally represent that: (1) Each person read this application; (2) Each person

adequately examined and investigated this application and concluded that this application complies with 12 CFR Part 563b.

Attest:

_____
(Duly Authorized Representative) (Principal Executive Officer)

_____
(Principal Financial Officer)

_____
(Principal Accounting Officer)

_____
(Director)

_____
(Director)

_____
(Director)

_____
(Director)

_____
(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

You must furnish the complete written plan that your board of directors adopted for the conversion to the stock form. You must prepare the plan of conversion in accordance 12 CFR 563b.320 through 563b.395. OTS will base its approval on the terms of this plan. You must distribute the approved plan as an attachment to the proxy statement and the offering circular.

Item 3. Proxy Statement and Offering Circular

You must furnish preliminary copies of the proxy statement and offering circular. You must prepare the proxy statement and offering circular in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

You must furnish preliminary copies of the form of proxy that your management will distribute to your members.

Item 5. Additional Information Required for Conversion With a Charitable Contribution

If your conversion application includes a charitable contribution, you must include the following information in your application:

(a) Your reasons for concluding that the proposed contribution is reasonable.

(b) The impact of the proposed contribution on the appraised valuation.

(c) A description of the charitable organization.

(d) The exhibits required under Exhibit 9.

Item 6. Sequence and Timing of the Plan

You must describe the expected chronological order of the events for your conversion. Begin with the filing of this application and end with the sale of all the stock under the plan. Estimate the timing of any requisite approvals by state or other regulators other than OTS. Indicate the proposed timing of all aspects of the subscription offering. If a selling agent will assist in the community offering, or if an underwriter will offer shares in the public offering, indicate the proposed timing of all aspects of the community offering and public offering.

Item 7. Record Dates

If the eligibility record date in your plan of conversion is more than one year before your board of directors adopted the plan of conversion, you must state why you selected the earlier date.

You must indicate what circumstances may require you to use a supplemental eligibility record date.

Item 8. Expenses Incident to the Conversion

You must estimate the expense of your conversion in the tabular form indicated below:

Legal	$
Postage and Mailing	.....
Printing	.....
Escrow or Agent Fees	.....
Underwriting Fees	.....
Appraisal Fees	.....
Transfer Agent Fees	.....
Auditing and Accounting	.....
Proxy Solicitation Fees	.....
Advertising	.....
Other Expenses	.....
Total	.....

Instructions. 1. Expenses that you incur in the conversion must be reasonable.

2. You may exclude salaries and wages of regular employees and officers, if you state that you excluded these items. You must state solicitation costs by specially engaged employees or paid solicitors under paragraph (b) of item 3 of Form PS under ''Proxy Solicitation Fees'' in this item.

3. You may not include any category of expense exceeding $10,000 in ''Other Expenses.'' If an expense exceeds $10,000 and is not specified above, you must itemize the expense under an appropriate category.

4. If your management does not conduct the solicitation, you must provide the information under ''Proxy Solicitation Fees'' for the cost of the solicitation.

Item 9. Indemnification

If you will insure or indemnify any underwriter, appraiser, lawyer, accountant or expert, or director or officer against any liability which he or she may incur in his or her capacity under any charter provisions, bylaw, contract, arrangement, statute, or regulation, you must state the general effect of the charter provision, bylaw, contract, arrangement or regulation.

Item 10. Federally Chartered Stock Savings Associations

You must state whether you are applying to amend your charter and bylaws to comply with 12 CFR part 552.

Exhibits

You must attach the following exhibits to this Form.

Exhibit 1. Resolution of Board of Directors

You must include a certified copy or copies of your board of directors' resolution or resolutions: (1) Adopting the plan of conversion; and (2) authorizing this application. Two-thirds of your board of directors must approve the plan of conversion and authorize this application.

Exhibit 2. Copies of Documents, Contracts and Agreements

You must furnish the following documents, contracts, and agreements.

(a) Proposed certificates for shares.

(b) Proposed order forms with respect to the subscription rights.

(c) Proposed charter (including a liquidation account provision) and bylaws.

(d) Any proposed stock option plan, form of stock option agreement, and management or employee stock benefit plan.

(e) Any proposed management employment contracts.

(f) Any contract described in response to item 6 of Form PS.

(g) Contracts or agreements with paid solicitors described in response to item 3(b) of Form PS.

(h) Any material loan agreements relating to your borrowing other than from a Federal Home Loan Bank and other than subordinated debt securities approved by OTS.

(i) Any appraisal agreement or proposed agreement, underwriting contract, agreement among underwriters, or selling agent agreement.

(j) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion stating that they are acting independently.

(k) Any documents referred to in the answer to item 9 of Form AC.

(l) Any trustee agreements or indentures.

(m) Any agreements for the making of markets or the listing on exchanges of your conversion stock.

(n) Proposed marketing materials.

If you furnish any document, contract, or agreement in draft form under this exhibit, you must furnish the final form immediately after the meeting of your members to consider the plan of conversion. You may provide documents required by subsection (i) above, that by their nature cannot be practically expected until a later time, in substantially final form.

Exhibit 3. Opinion of Counsel

You must furnish an opinion of counsel discussing each of the following matters:

(a) The legal sufficiency of your proposed certificates and order forms for any shares.

(b) State law requirements that apply to the plan of conversion. The opinion must cite to applicable state law and address whether the plan will fulfill the requirements.

(c) The legal sufficiency of your bylaws.

(d) The type and extent of each class of voting rights after conversion. The opinion must discuss any state law that requires you to provide savings account holders or borrowers with voting rights.

(e) A certification or statement that the proposed charter and bylaws conform to 12 CFR part 552 of this chapter.

(f) The legal sufficiency of your marketing materials.

You must discuss the matters listed in subdivisions (b), (c) and (d) of this Exhibit only if you are converting to a state-chartered stock association.

Exhibit 4. Federal and State Tax Opinions or Ruling

(a) You must furnish an opinion of your tax advisor or an Internal Revenue Service ruling on the federal income tax consequences of the plan of conversion. The opinion or ruling must address the tax consequences to you and to the various account holders who receive nontransferable subscription rights to purchase shares.

Instruction. OTS may require you to obtain a ruling from the Internal Revenue Service if the IRS has not issued a favorable ruling to plans of conversion that are substantially similar to your plan. OTS also may require you to obtain a ruling if your plan of conversion contains novel provisions or raises questions with federal income tax consequences.

(b) You must furnish an opinion of your tax advisor or, if applicable, a ruling from the appropriate state taxing authority on any tax consequences of the plan of conversion under the laws of the state where you will be located. The opinion must address the tax consequences to you and to your eligible account holders.

Exhibit 5. Valuation Materials

You must furnish the materials required under 12 CFR 563b.200(b) regarding the valuation of your shares. You are not required to file the materials if you will not begin to offer shares before your members' meeting to vote on the plan of conversion.

Exhibit 6. Notice to Members

You must furnish evidence that you have notified your members as required by 12 CFR 563b.135 and 563b.180.

Exhibit 7. Other Materials

(a) If you do not provide information required by an appropriate form because you do not know the information or the information is not reasonably available, you must:

(1) show that you will incur unreasonable effort or expense to obtain the information; or

(2) indicate that you have no affiliation with the person who has the information, state that you have requested the person to provide the information, and indicate the result of that request.

(b) You must furnish all required consents.

(c) If anyone has signed an application or any amendment to an application using a power of attorney, you must furnish four copies of the power of attorney. Two copies must be manually signed.

(d) You must furnish the cross-reference sheet.

(e) If you request a waiver under 12 CFR 563b.5(c), you must furnish the materials required by that section.

Exhibit 8. Business Plans

(a) You must furnish a consolidated business plan as required by 12 CFR 563b.105. You must detail how you will use the capital that you acquire in the conversion. You should not project stock repurchases, returns of capital or payment of extraordinary dividends in your business plan. OTS views a return of capital to shareholders as a material deviation from the business plan that requires the prior written approval of the Regional Director.

(b) You must follow 12 CFR 563b.160 if you wish OTS to deem any portion of your business plan confidential.

Exhibit 9. Conversion Application that Includes a Charitable Organization

If your conversion includes a contribution to a charitable organization you must provide:

(a) The current and proposed charter and bylaws (or trust agreement) for the charitable organization.

(b) The proposed gift instrument.

(c) A three year operating plan for the charitable organization, including the following:

(1) Pro-forma financial statements, including a balance sheet and income statement.

(2) Plans and expenses for any office space, employees, office equipment, supplies, and other items.

(3) A description and the estimated annual value of any contributed office space, personnel, furniture, equipment, and supplies and the name of the organization that will make the contribution.

(4) Any director, officer, and employee requirements and job descriptions.

(5) The terms of employment and any expected compensation for the directors (or trustees), officers, and employees.

(6) charitable causes that the charitable organization will support, including their location and a description of how the activities will aid the local community.

(7) Plans, policies, and procedures for soliciting and accepting grant applications.

(8) Decision standards for grant approval.

(9) The anticipated number and dollar amount of grants the charitable organization will make each year for the three years after it is established.

(10) Projected sources of revenues, including whether the operations and grant activities will be funded by dividends, stock sales, or additional contributions.

(11) An explanation of how the charitable organization will select directors (or trustees) and how much experience the directors (or trustees) will have with local community charitable organizations and grant making.

(d) A conflicts of interest policy for the charitable organization that prohibits grants to your officers, directors, and employees, your affiliates' officers, directors, and employees, and members of their immediate families.

(e) A legal opinion from independent counsel discussing whether the charitable organization's proposed charter and bylaws (or trust agreement), including the required pro-rata voting provision discussed in 12 CFR 563b.575, comply with applicable state law.

(f) A tax opinion from an independent accountant or independent tax counsel discussing whether the proposed contribution and any other contributions during the same year are deductible under federal and state law. The tax opinion must address deductibility for the year that you will make the contribution and for a five-year carry forward period.

OTS Form 1680, June 2000

Appendix B—Form PS—Proxy Statement

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form PS—Proxy Statement

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to provide mutual members with information necessary for voting on the transaction. *See* Part 563b.

Public reporting burden for this collection of information is estimated to average 50 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form PS—Proxy Statement

Office of Thrift Supervision 1700 G Street, NW., Washington, DC 20552

Proxy Statement

_____

(Name of Applicant in charter)—(Docket No.)

_____

(Street address of Applicant)

_____

(City, State and Zip Code)

Index to Items

General Information

If OTS requests information on your directors, officers, or other persons holding specified positions or relationships during a specified period, you must give the information for every person who held the positions or relationships any time during the period. You do not have to include information for any portion of the period when a person did not hold any position or relationship. You must state, however, that you did not include this information.

Item 1. Notice of Meeting

You must include the following information on the cover page of your proxy statement:

(a) notice of the members' meeting to vote on the conversion;

(b) the meeting date, time and place;

(c) a brief description of each matter that will be voted at the meeting;

(d) the date of record for determining which members are entitled to vote at the meeting;

(e) the date of the proxy statement; and (f) your mailing address, zip code, and telephone number.

Item 2. Revocability of Proxy

(a) You must state that a member may revoke his or her proxy before it is exercised.

(b) You must briefly describe the procedures a member must follow to revoke his or her proxy.

(c) You must describe any charter provision, bylaw, or federal or state law that limits voting by proxy.

(d) You must state that the proxy is solicited for the meeting and any adjournment of the meeting, and that you will not vote the proxy at any other meeting.

Item 3. Persons Making the Solicitation

(a) You must state whether your management is soliciting the proxy. If any director informs you in writing that he or she intends to oppose any action, you must name the director and indicate the action he or she intends to oppose.

(b) You must describe the method that you will use to solicit proxies, unless you solicit by mail. If specially engaged employees or paid solicitors will solicit proxies, you must state the material features of any contract or arrangement and must identify the parties.

(c) If your management is not soliciting the proxies, you must name the persons on whose behalf the solicitation is made. You do not have to respond to items 5 through 16 for such solicitations, but must comply with § 563b.285 on false and misleading statements and other prohibited matters.

Item 4. Voting Rights and Vote Required for Approval

(a) You must describe briefly:

(1) the voting rights of each class of your members,

(2) the approximate total number of votes entitled to be cast at the meeting,

(3) the approximate number of votes to which each class is entitled, and

(4) the voting rights of beneficiaries of accounts held in a fiduciary capacity, such as IRA accounts.

(b) You must give the record date for members entitled to vote at the meeting.

(c) You must state the vote required for approval of each matter that you will submit to a vote of members.

(d) You may not use previously executed proxies to vote on the conversion.

Item 5. Directors and Executive Officers

(a) You must furnish the information on directors and executive officers and certain relationships and related transactions required in items 401 and 404 of Regulation S–K, 17 CFR 229.401 and 404, and item 6 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words ''registrant'' and ''issuer'' in those regulations refer to you and the word ''Commission'' refers to OTS.

(b) If your conversion application includes a charitable contribution, you must disclose:

(1) The proposed number of directors (or trustees) and officers of the charitable organization.

(2) The name and background of each person proposed as a director (or trustee) or officer of the charitable organization.

(3) The position, if any, that each proposed director (or trustee) and officer holds with you.

(c) You must state whether anyone will exercise control through the use of proxies and describe the nature of the control.

Item 6. Management Compensation

You must furnish the information on executive compensation required in item 402 of Regulation S–K, 17 CFR 229.402, and item 7 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words ''registrant'' and ''issuer'' in those regulations refer to you and the word ''Commission'' refers to OTS.

Item 7. Business

(a) *Narrative description of business.* (1) You must discuss briefly your organizational history, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) You must describe the business that you and your subsidiaries conduct and intend to conduct. You must describe how your business and any predecessor(s) business developed over the past five years. If you have been engaged in business less than five years, you must provide information from when you began operations. You must disclose this information for earlier periods if the information is material to understand how your business developed. You must discuss material changes in the way you conduct business.

Instruction. If you are filing under Regulation S–B, you must include audited comparative balance sheets for the two most recent fiscal years.

(3) You must describe your historical lending practices, including the average remaining term to maturity of your portfolio of mortgage loans. You must state your plans for lending. You must address whether you will offer real estate or other types of loans, the nature of security you will receive, the terms of loans you will offer, whether the loans will carry fixed or variable interest rates, and whether you will retain the loans or resell them in secondary mortgage markets. You must identify the magnitude of various activities.

(4) You must explain whether any material acquisitions have had or will have significant impact on you, and the nature of the impact.

(b) *Selected financial data.* You must furnish a summary of your selected financial data. You must provide this information in columns that permit the comparison of data in each of the last five fiscal years. You must provide data for any additional fiscal years, if the data is necessary to keep the summary from being misleading.

Instructions. 1. The purpose of this summary is to supply selected data highlighting significant trends in your financial condition and results of operations in a convenient and readable format.

2. You must include the following items in the summary: Total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total deposits; total borrowings; total retained earnings; total shareholders' equity; total regulatory capital; and total number of customer service facilities, indicating the number which provide full service. You may vary this data if the variance is appropriate to conform to the nature of your business. You may include additional items if you believe the items would enhance understanding and highlight trends in your financial condition and results of operations. You must briefly describe factors that materially affect the comparability of the financial data, such as accounting changes, business combinations, or dispositions of business operations. You may describe such factors by a cross reference to other discussions in the proxy statement. You must also discuss any material uncertainties that may cause the data not to be indicative of your future financial condition or results of operations.

3. If you elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 (''SFAS 89'') ''Financial Reporting and Changing Prices,'' you may combine this information with the selected financial data required in this item.

4. If you include interim-period financial statements, or you are required to include interim-period financial statements under item 14, you must update the selected financial data for the interim period to reflect any material change in the trends indicated. If updating information is necessary, you must provide the information on a comparative basis, unless the comparison is not necessary to understand the updating information. You must provide a management statement of presentation for the required interim-period financial data reported.

5. ''You'' in the summary and in these instructions refers to you and your consolidated subsidiaries.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) You must discuss your financial condition, changes in financial condition, and results of operations. You must discuss the information in paragraphs (i), (ii), and (iii) of this paragraph (c) with respect to liquidity, capital resources, and results of operations. You must also provide all other information necessary to understand your financial condition, changes in your financial condition, and results of your operations. You must discuss significant business combinations. You may combine the discussion of liquidity and capital resources, if the two topics are interrelated.

If a discussion of the subdivisions of your business is appropriate to understand your business, you must focus your discussion on each relevant, reportable segment or other subdivision of the business, and on your business as a whole.

(i) *Liquidity.* You must identify any known trends or any known demands, commitments, events, or uncertainties that are reasonably likely to cause your liquidity to materially increase or decrease. If you identify a material deficiency, indicate what you have done or will do to remedy the deficiency. You must identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. You must comment on maturity imbalances between assets and liabilities, and planned activities in the secondary mortgage market.

(ii) *Committed resources.* You must describe your material commitments for funding loans or other expenditures as of the end of the latest fiscal period. You must indicate the general purpose of the commitments and the anticipated source of funds to fulfill the commitments. You must describe known material trends, favorable or unfavorable, in your committed resources. You must indicate any expected material changes in the mix and the relative cost of the resources. You must discuss changes between deposits, equity, debt, and any off-balance-sheet financing arrangements.

(iii) *Results of operations.* (A) You must describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations. In each case, you must indicate the extent to which these events, transactions, or changes affected income. In addition, you must describe any other significant components of revenues or expenses necessary to understand your results of operations.

(B) You must describe any known trends or uncertainties that have had, or will have, a materially favorable or unfavorable impact on net sales or revenues or income from your continuing operations. If you know of events which will cause a material change in the relationship between costs and revenues you must disclose the change in the relationship.

(C) If your financial statements disclose material increases in interest expense, you must discuss the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For your three most recent fiscal years, or for those fiscal years in which you have been engaged in business, whichever period is shorter, you must discuss the impact of inflation and changing prices on your revenues and on income from continuing operations.

(E) For the most recent financial statement, you must discuss any unusual risk characteristics in your assets, including real estate development, significant amounts of commercial real estate held as loan collateral, and significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III C).

(iv) You must provide a qualitative and quantitative discussion of your market risk analysis.

Instructions. 1. Your discussion and analysis must address your financial statements and other statistical data that will enhance a reader's understanding of your financial condition, changes in your financial condition, and results of your operations. Generally, you must discuss the three-year period covered by the financial statements and use year-to-year comparisons or other formats to enhance a reader's understanding. However, where trend information is relevant, you should refer to the five-year selected financial data appearing in item 7(b) above.

2. Your discussion and analysis should provide investors and other users with relevant information to assess your financial condition and results of operations, based on the user's evaluation of the amounts and certainty of cash flows from operations and from outside sources. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your financial statements.

3. Your discussion and analysis must specifically focus on material events and uncertainties known to you which would cause reported financial information not to be indicative of future operating results or of future financial condition. You should describe (a) matters that would affect future operations, but have not affected reported operations, and (b) matters that have affected reported operations, but would not affect future operations.

4. If the consolidated financial statements reveal material changes from year to year in one or more line items, you must state the causes for the changes if the causes are necessary to understand your business as a whole. If the causes for a change in one line item also relate to other line items, you do not have to repeat the explanation. You do not have to provide a line-by-line analysis of the financial statements as a whole. You do not have to recite the amounts of changes from year to year, if the reader may readily compute these changes from the financial statements. You must not merely repeat numerical data contained in the consolidated financial statements.

5. ''Liquidity,'' as used in paragraph (c)(1)(i) of this item 7, refers to your ability to generate adequate amounts of cash to meet your cash needs. You must identify the balance sheet conditions or income or cash flow items that indicate your liquidity condition. You must discuss liquidity in the context of your own business or businesses. Liquidity means more than ''liquid assets,'' as defined in OTS liquidity regulations at 12 CFR Part 566.

6. OTS encourages you, but does not require you, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b–6.

7. If you disclose narrative explanations of supplementary information in accordance with SFAS 89, you may combine these explanations with your discussion and analysis required under this provision or you may supply the information separately. If you combine the information, you must place it reasonably near the discussion and analysis. If you do not combine the information, you may omit the required discussion of the impact of inflation and cross reference the explanations provided under SFAS 89.

8. If you do not disclose explanations of supplementary information in accordance with SFAS 89, you may discuss the effects of inflation and changes in prices in an appropriate manner. OTS encourages you to voluntarily comply with SFAS 89. However, you must include a brief textual presentation of management's views. You do not have to present specific numerical financial data.

9. ''You'' in the discussion and in these instructions means you and your consolidated subsidiaries.

(2) If you include interim-period financial statements, you must provide management's discussion and analysis of the financial condition and results of operations. This discussion and analysis must enable the reader to assess material changes in your financial condition and results of operations between the periods specified in subdivisions (i) and (ii) of this paragraph. Your discussion and analysis must address material changes in the items specifically listed in paragraph (c)(1) of this item 7. However, you do not have to address the impact of inflation and changing prices on operations for interim periods.

(i) *Material changes in financial condition.* You must discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet that you provide. If you provide an interim balance sheet as of the corresponding interim date of the preceding fiscal year, you must discuss any material change in financial condition from that date to the date of the most recent interim balance sheet that you provide. You may combine any discussion of changes from the end, and the corresponding interim date, of the preceding fiscal year.

(ii) *Material changes in results of operations.* You must discuss any material changes in your results of operations from the most recent fiscal year-to-date period for which you provide an income statement to the corresponding year-to-date period of the preceding fiscal year. If you provide an income statement for the most recent fiscal year quarter, you must discuss material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if you provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet you provide, you must discuss material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If you present interim financial statements and financial statements for full fiscal years, you must discuss the interim financial information under paragraph (c)(2) and the full fiscal year

information under paragraph (c)(1) of this item 7. You may combine the discussions.

2. In your discussion and analysis required by paragraph (c)(2), you must focus on material changes. If your interim financial statements reveal material change from period to period in one or more significant line items, you must describe the causes for the changes, unless you have already disclosed these causes. You do not have to repeat the description if the causes for a change in one line item relate to other line items. You do not have to recite the amounts of changes from period to period, if a reader may readily compute the amounts from the financial statements. You must not merely repeat numerical data from the financial statements. You must only provide information that you may obtain without undue effort or expense, and that does not clearly appear in your interim financial statements.

3. In your discussion of material changes in results of operations, you must identify significant elements of your income or loss from continuing operations that do not arise from or are not necessarily representative of your ongoing business.

4. You are encouraged, but not required, to supply forward-looking information. You must disclose known data that will have an impact upon future operating results, such as known future increases in rates or other costs. If you provide any forward-looking information, you may have a safe-harbor from liability for the projections under 12 CFR 563d.3b-6.

(d) *Lending activities.* (1) You must briefly describe federal and state restrictions on your lending activities and laws affecting mortgage lending or other lending. You must also briefly describe your general policy on loan-to-value ratios; your customary methods of obtaining loan originations, (*e.g.*, the use of loan consultants or brokers); your general policy on approval of properties as security for loans; your use of a loan committee, if any; and your title, fire, and casualty insurance requirements on security properties. You must indicate your future plans for secondary mortgage market activities, such as transactions with Freddie Mac or other secondary mortgage agency. You must identify significant loan service fee income as a percentage of net interest income for the years required by item 14(b).

(2) You must describe briefly (i) the areas where you normally lend; and (ii) any areas where you have a material concentration of loans. You may include maps illustrating these areas. You must estimate the housing vacancy rates in areas where you have a concentration of loans, if practicable.

(3) You must describe briefly your long-term investments in mortgage loans, and the effect of these investments on your earnings spread. You must provide the normal maturity of loans that you made on the security of single-family dwellings and estimate the average length of time these loans are outstanding.

(4) For each of the periods required by item 14(b), you must provide the following information in tabular form. You may exclude fees that are not adjustments of yield.

(i) Average yield during the period on: (A) your loan portfolio, (B) your investment portfolio, (C) other interest-earning assets, and (D) all interest-earning assets. You must compute average yield at least monthly.

(ii) Average rate paid during the period on: (A) deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, and (D) all interest-bearing liabilities ((A), (B), and (C)). You must compute average rate paid at least monthly.

(iii) Weighted-average yield at end of the latest required period, for items (i) and (ii) of paragraph (4).

(iv) The net yield on average interest-earning assets (*i.e.*, net interest earnings divided by average interest-earning assets. Net interest earnings is the difference between the amount of interest earned and interest paid). You must determine average interest-earning assets no more frequently than monthly.

(v) For each of the periods required by item 14(b), you must provide in tabular form: (A) The amount of change in interest income and (B) the amount of change in interest expense. For each major category of interest-earning asset and interest-bearing liability (as stated in items (i) and (ii) of paragraph (4)), you must attribute the amount of change to: (1) Changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). You must allocate the rate/volume variances consistently between rate and volume variance and disclose the basis of allocation in a note to the table.

(5) For each of the periods required by item 14(b), you must present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

Instruction. You must supply any additional ratios if the ratios are necessary to explain your operations.

(6) As of the end of the latest reported fiscal year, you must present separately the amounts of loans in each category required by balance sheet item 7(b), 12 CFR 563c.102, which are due:

(i) in each of the three years following the balance sheet,

(ii) after three through five years,

(iii) after five through ten years,

(iv) after ten through fifteen years, and

(v) after fifteen years.

In addition, you must present separately the total amount of all loans due after one year which have predetermined interest rates, and floating or adjustable interest rates.

Instructions. 1. You must report scheduled principal repayments in the maturity category in which the payment is due.

2. You must report demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts as due in one year or less.

3. You must base your maturities on contract terms. If terms vary due to your ''rollover policy,'' you must revise the maturity and briefly discuss the rollover policy.

(7) You must describe briefly the risk elements in your loan and investment portfolios, and your procedures for delinquent loans. As of the end of each of the periods covered by the statements of operation required by item 14(b)(1) and as of the date of the latest statement of financial condition required by item 14(a), you must set forth in tables the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III. C.) and the ratio of such loans to total assets. If the amount of real estate that has been in substance foreclosed, or acquired by foreclosure or by deed in lieu of foreclosure is significant, you must briefly describe the major properties. You must also estimate your probable losses, if any, on disposition of the properties.

(e) *Savings activities.* (1) You must state that, if you liquidate after conversion, you will fully pay savings account holders before you pay shareholders. You also must indicate the percentage of total savings accounts that are from out-of-state sources, if the total is significant.

(2) You must set forth in a table the amounts of time deposit accounts categorized by interest rates on the dates of each balance sheet that you filed. You must use interest-rate categories that are not more than 200 basis points wide. As of the date of the latest balance sheet, you must set forth, in a table for each interest-rate category, the amounts of savings that will mature during each of the three years following the balance sheet date, and the total amount that will mature after three years.

Instruction. This information is not required for S-B filers.

(3) You must disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, 12 CFR 563c.102. You must also disclose the maximum amount of borrowings in each category that are outstanding at any month-end during each period for which an end-of-period balance sheet is required. You must disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate for such aggregate short-term borrowings. You must briefly describe how you computed these averages. You do not have to disclose borrowings in each category if the aggregate amount of the borrowings at the balance sheet date does not exceed one percent of assets at that date. However, if the weighted average of your borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of your borrowings at year-end, you must furnish this disclosure. You are not required to provide this information for any category of short-term borrowings if the average balance outstanding during the period was less than 30 percent of shareholders equity at the end of the period.

(f) *Federal regulation.* You must describe briefly, to the extent not otherwise covered

by other items, how federal agencies regulate you and your operations. In particular, you must describe briefly how the Federal Deposit Insurance Corporation (FDIC) insures your accounts and how FDIC and OTS regulate your operations. You must describe federal regulatory capital requirements, what will happen to you if you fail to meet those capital requirements, and whether your regulatory capital position complies with those requirements. You must also describe how the FDIC and OTS charge assessments on your operations. In addition, you must describe briefly the liquidity requirements under section 6 of the Home Owners' Loan Act and OTS liquidity regulations, and state law. You must state whether you meet those liquidity requirements.

(g) *Federal Home Loan Bank System.* You must describe briefly the Federal Home Loan Bank (FHLB) System and state whether you are a member. If you are a member, you must describe the following:

(1) Limitations on your borrowings,

(2) Recent loan policies of your FHLB and the current interest rates your FHLB charges, and

(3) FHLB share purchase requirements and the amount of FHLB stock you own.

(h) *State savings association law.* If you are converting to a state-chartered stock association, you must describe state law provisions that materially affect your business.

(i) *Federal and state taxation.* (1) You must describe briefly applicable federal income tax laws including:

(i) Permissible bad debt reserves;

(ii) Your position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under item 14(a);

(iii) Future increases in your effective income tax rate;

(iv) The date through which the Internal Revenue Service audited your federal income tax returns; and

(v) How the payment of cash dividends on your capital stock after conversion will affect your federal income taxes.

(2) You must briefly describe applicable state tax laws.

(j) *Competition.* You must describe the material sources of competition for savings associations generally. You must indicate, to the extent practicable, your position in your principal lending and savings markets.

(k) *Office and other material properties.* (1) You must furnish the location of your home office, branch offices, and other office facilities (such as mobile or satellite offices). You must state the total net book value of all offices as of the date of the latest statement of financial condition required by item 14(a). You must state the expiration date of the lease on every leased office.

(2) You must describe briefly any undeveloped land that you own, including its location, net book value, prospective use, and holding period.

(l) *Employees.* You must state the number of full-time employees, including executive officers listed under item 5. You must state whether employees are represented by a collective bargaining group, and whether you have satisfactory relations with your employees. You must summarize briefly any loan, profit sharing, retirement, medical, hospitalization or other compensation plans that you provide to your employees, unless you have already included this information under item 6.

(m) *Subsidiaries.* You must describe briefly your investment in each subsidiary, and the major lines of the subsidiary's business (including any joint ventures) that are material to your operations.

(n) *Legal proceedings.* You must furnish the information on legal proceedings required by item 103 of Regulation S–K, 17 CFR 229.103. Unless the context otherwise requires, ''registrant'' in that regulation means you.

(o) *Additional information.* You may request permission to omit any information required by this item, or to substitute appropriate information of comparable character. OTS may permit you to omit or substitute information where it is consistent with the protection of account holders. OTS may also require you to furnish other additional or substitute information if the information is necessary or appropriate to adequately describe past and future business.

Item 8. Description of the Plan of Conversion

(a) You must include the following statement in the proxy statement. You must place this statement before the information required by this item 8. ''OTS has approved the plan of conversion, subject to member approval the plan and certain other conditions. OTS approval does not mean that OTS recommends or endorses the plan.''

(b) You must describe your plan of conversion. You must describe the information required by paragraphs (c) through (j) of this item. You must include any additional information necessary to accurately describe the material provisions of the plan.

(c) You must briefly describe the effects of conversion from a mutual to a stock association, including all of the following:

(1) That your savings account holders will continue to hold FDIC-insured accounts in the converted savings association, with the same dollar amount, rates of return, and general terms as existing accounts;

(2) That your savings and borrowing members will not have voting rights after conversion. In the mutual holding company context, however, you must describe what voting rights, if any, your savings and borrowing members will have after reorganization;

(3) That the account holders have liquidation rights. You must describe the liquidation account you will establish and maintain, including when you will pay the account, the interest of eligible account holders and supplemental eligible account holders in the account, and the formula that you will use to adjust the account;

(4) That the conversion will not affect borrowers' loans, including the amount, rate, maturity, security, or other contractual terms;

(5) That the FDIC will not insure your stock;

(6) That you will not distribute any assets other than to pay conversion expenses or to make a charitable contribution; and

(7) The reasons management recommends the conversion, including any advantages to the community that you serve.

(d) You must furnish the following information regarding the subscription rights of members:

(1) The formula that you will use to determine the subscription rights of account holders to purchase shares under 12 CFR 563b.320 through 563b.390;

(2) The purchase priorities, total purchase limitations, total number of shares that members may purchase, and the allocation formula in the plan of conversion;

(3) The allocation formulas that you will use if shares are oversubscribed during the sale under the plan of conversion; and

(4) The use and timing of the order forms for the exercise of subscription rights.

(e)(1) You must estimate the price range per share of the shares you will sell in the public offering under your plan of conversion. You do not have to estimate the price range if you will not begin the offering until after your members' meeting;

(2) You must indicate that the offering price will be the pro forma market value of the shares, as determined by your management and the underwriter; and

(3) You must state that you must sell all of the shares.

(f) Unless you will not begin the offering until after your members' meeting, you must discuss the following for stock you will sell:

(1) the earnings per share on a pro forma basis as of the most recent year-end and interim period required by item 14(b); and

(2) the book value per share on a pro forma basis as of the most recent year-end and interim period required by item 14(a).

Instructions. 1. You must provide earnings and book value per share data (a) without giving effect to the estimated net proceeds from the sale of the stock and (b) after giving effect to such proceeds. You must clearly state all of your assumptions.

2. In computing pro forma earnings, you must use the average of (i) the average yield on all interest-earning assets (item 7(d)(4)(i)(D)) and (ii) the average rate paid on deposits (item 7(d)(4)(ii)(A)).

3. If interest rates have significantly changed during the applicable periods, OTS may permit you to use properly supported alternative computations.

4. You must explain that pro forma data may not be indicative of your actual financial position or the results of continuing operations after the conversion.

(g) You must state when the proposed subscription period will begin and end, and must describe whether the plan of conversion permits you to change or extend these dates. You must also state the following:

(1) You will set a maximum subscription price in the offering circular that you will use for the offering of subscription rights;

(2) The actual subscription price will be the public offering price;

(3) The actual subscription price will not exceed the maximum subscription price on the order form; and

(4) You will refund any difference between the maximum and actual subscription prices, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(h) You must also:

(1) Describe, to the extent practicable, whether you intend to list your shares on an exchange, or how you will otherwise provide a market for the purchase and sale of shares in the future;

(2) Describe briefly the tax effect of the conversion on you and on the various classes of account holders receiving nontransferable subscription rights in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement and that the reader may consult the plan for further information.

(i) You must state whether the plan of conversion permits you to offer unsubscribed shares to the public directly or through underwriters. If so, you must provide the information, to the extent known, required by item 6 of Form OC, and indicate the estimated timing of the proposed offering.

(j) You must furnish the following information on proposed purchases of shares by your directors and officers in a table:

(1) The total proposed number of shares that all officers, directors and their associates as a group may purchase.

(2) The name and position of each officer and director in item 5(a) and the number of shares each will purchase.

(3) If any officer, director or his or her associate proposes to purchase one percent or more of the total number of shares that will be outstanding, the name, position, and the number of shares that the officer, director or associate will purchase.

(4) Indicate separately the number of shares that will be purchased in each offering category with respect to the information required by items (1), (2) and (3) of paragraph (j).

(5) If your conversion application includes a charitable contribution, you must disclose the following additional information:

(i) The amount and percentage of shares that each proposed director (or trustee) and officer of the charitable organization will purchase in the conversion.

(ii) The aggregate number and percentage of shares that the charitable organization and its proposed officers and directors (or trustees) will hold.

(iii) The number of shares and value of the contribution at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(iv) The decrease in shares that you will sell in the conversion, in number of shares and dollar amounts, at the minimum, midpoint, maximum, and maximum as adjusted, of the valuation range.

(v) The dilution in ownership and book value per share from the proposed contribution.

(vi) Your plans for additional charitable contributions over the next three years.

Instruction. You are only required to furnish information on associates of officers and directors to the extent that you know this information. If you are unable to confirm the number of shares an associate will purchase, you must disclose the number of shares the associate is given subscription rights to purchase.

Item 9. Description of Stock

(a) You must furnish the information required in item 202 of Regulation S–K, 17 CFR 229.202. Unless the context otherwise requires, ''registrant'' refers to you.

(b) You must undertake to use your best efforts to encourage and assist a professional market maker to establish and maintain a market for your shares.

(c) You must discuss the trading market that you expect will exist for your shares. You must estimate the number of market makers and shareholders, and describe your plans for listing the stock.

Instruction. You must describe the basic requirements you must meet to list your stock.

(d) If the rights of your stockholders will be materially limited or qualified by the rights of savings account holders or borrowers, you must describe these limitations or qualifications so that investors can understand their stock rights.

Item 10. Capitalization

You must set forth the amounts of your capitalization in substantially the tabular form indicated below. You may modify the captions as appropriate.

	(A) Capitalization on most recent balance sheet date	(B) Pro forma adjustments as a result of conversion	(C) Pro forma capitalization, after giving effect to the conversion
Deposits.			
FHLB advances.			
Other Borrowings.			
Capital stock			
Preferred stock			
Paid-in capital.			
Retained earnings Restricted Unrestricted.			
Total.			

Instructions. 1. You must indicate in the table, or in a footnote to the table, the total number of shares you will authorize, the par or stated value of the shares, and the number of shares you will sell in the conversion.

2. You must estimate in the table the total amount of funds you will receive when you sell your stock. In a footnote, you must state the price per share that you used for the estimate. You must clearly indicate that the total amount and price per share are estimates.

3. In Column A, you must use the most recent balance sheet date required by item 14.

Item 11. Use of New Capital

You must explain how you will use the new proceeds of the conversion, including the approximate amount that you will use for each purpose.

Instruction. You do not have to detail proposed investments. You must, for example, only briefly describe any investment or other activity that will be affected materially by availability of the proceeds. Examples of such activities include: expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New Charter, Bylaws, or Other Documents

You must describe the material changes to your existing charter, bylaws, and other similar documents that will take effect after conversion.

Instruction. You only have to briefly summarize provisions that are pertinent from an investment and a voting standpoint. You do not have to provide a complete legal description of each provision.

Item 13. Other Matters

You must state that you will register your stock under section 12(g) of the Securities Exchange Act of 1934, and that you will not deregister the stock for three years after the date of conversion. You are subject to the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act when you register your stock.

Item 14. Financial Statements

Subpart A of 12 CFR Part 563c governs the certification, form, and content of the financial statements, including the basis of consolidation.

(a) *Consolidated balance sheets.* (1) You and your subsidiaries must furnish consolidated, audited balance sheets as of the end of each of the two most recent fiscal years, even if the applicant is filing using the provisions of Regulation S–B.

(2) If the latest balance sheets you furnish under (1) of this paragraph are dated 135 days or more before the date OTS approves the conversion, you must furnish an interim balance sheet dated within 135 days of OTS approval. This interim balance sheet may be unaudited.

(3) If the latest balance sheets you furnish under (1) of this paragraph are dated 105 days or more before the date OTS approves the conversion, you must furnish a Recent Development section of selected financial data and a Management's Discussion and Analysis section of significant variances.

(b) *Consolidated statements of income and cash flows.* (1) You, your subsidiaries, and your predecessors must furnish consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, you must furnish statements of income and cash flows (i) for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet that you file, and (ii) for the corresponding period of the preceding fiscal year. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* You must analyze the changes in each caption of stockholders' equity in the balance sheets. You must present this analysis in a note or separate statement that reconciles the beginning balance with the ending balance for each period for which you are required to furnish an income statement. You must describe all significant reconciling items with appropriate captions. You must reconcile total generally accepted accounting principles (GAAP) capital with actual tangible, core, and risk-based capital in the notes to the financial statements.

(d) *Financial statements of business acquired or to be acquired.* You must furnish the information required by 17 CFR 210.3–05 and 210.11–01 to –03 for any business that you have acquired or will acquire.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent-or less-owned persons.* You must furnish the information required by 17 CFR 210.3–09 on separate financial statements of subsidiaries not consolidated and 50-percent-or less-owned persons.

(f) *Filing of other statements in certain cases.* You may request permission to omit any of the statements required by this item, or to substitute appropriate statements of comparable character. OTS may permit you to omit or substitute statements where it is consistent with the protection of account holders. OTS may also require you to include other additional or substitute statements, if the statements are necessary or appropriate to adequately present the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

Instructions. 1. If you previously used an audit period for your certified financial statements and this audit period does not coincide with your fiscal year, you may use the audit period instead of any required fiscal year. You may use this audit period, however, only if it covers a full twelve months' operations and you have used this period consistently.

2. Interim financial statements must be comparative and reported in the same format as the audited financial statements.

Item 15. Consents of Experts and Reports

(a) You must briefly describe all consents of experts filed under the instructions in the Form AC.

(b) You must provide a report of the independent public accountants who certified your financial statements and other matters in the proxy statement.

Instruction. You must summarize only the provisions of the consents that are pertinent from an investment and a voting standpoint. You do not have to provide a complete legal description of each consent.

Item 16. Attachments

You must attach a copy of your plan of conversion as approved by OTS to the proxy statement distributed to members and others. Alternatively, in a transaction that does not utilize a state-chartered holding company, you may disclose in the proxy statement that you will provide the plan of conversion, if a recipient requests it within a specified period by means of a postage-paid postcard or other written communication.

OTS Form 1681, June 2000.

Appendix C—Form OC—Offering Circular

[Not To Be Codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form OC—Offering Circular

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure that the public receives adequate information about the Applicant and the securities being offered. *See* Part 563b and Part 563g.

Public reporting burden for this collection of information is estimated to average 150 hours, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

FORM OC—Offering Circular

Office of Thrift Supervision
1700 G Street, NW., Washington, DC 20552

Offering Circular

_____

(Name of Applicant in charter) (Docket No.)

_____

(Street address of Applicant)

_____

(City, State and Zip Code)

Index to Items

Item 1. Information Required by and Use of Form OC

You must date the offering circular as of the date that you mail it. You must include in your offering circular substantially the same information that you must include in the proxy statement that you distribute to your members to vote on the conversion. You may omit information from the offering circular that you included in the proxy statement only to the extent the information is clearly inapplicable. The offering circular may be in ''wrap around'' form, where the proxy statement is attached.

Instructions. 1. The ''offering circular'' is the offering circular for the subscription offering and the offering circular for any community offering or public offering, or both. It may also be called a ''prospectus.''

2. If you previously furnished a copy of the proxy statement to your members, you do not need to include the proxy statement as an attachment to your offering circular for a subscription offering in ''wrap around'' form. However, you must state in the offering circular that you previously furnished a copy of the proxy statement to the members, and that you will furnish an additional copy promptly upon request. You also must state your telephone number and mailing address.

Item 2. Additional Current Information Required

You must include the following additional current information in your offering circular, if the information is available and you did not already include the information in the proxy statement:

(a) If your members' meeting took place before you mailed the Form OC, the result of the vote of your members on the conversion and any other proposals considered at the meeting.

(b) Any recent material developments in your business or affairs.

(c) The trading market that you expect for your conversion shares.

(d) A summary of the results of any separate subscription offering. You must include the number of shares that you sold to eligible account holders, supplemental eligible account holders, and other voting members, the price at which you sold the shares, and the number of unsubscribed shares. You must include this summary on the outside front cover page.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make the offering circular current, including full financial statements dated within six months before the date you mail the offering circular. You must also include, in your subscription offering circular, any more recent financial statements if, at the time you commence your subscription offering, you determine that you must include the financial statement in an offering circular in the community offering or public offering, or both.

Item 3. Statement Required in Offering Circulars

You must set out the following statement on the outside front cover page of every offering circular. You must set out the statement in capital letters printed in bold-face Roman type at least as large as ten-point modern type and at least two points leaded:

THE OFFICE OF THRIFT SUPERVISION HAS NOT APPROVED OR DISAPPROVED THESE SHARES. THE OFFICE HAS NOT PASSED ON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. Preliminary Offering Circular

You must include the caption ''Preliminary Offering Circular,'' the date you issue the preliminary offering circular, and the following statement on the outside front cover page of any preliminary offering circular. You must set out the statement in red ink, printed in type as large as you use generally in the body of the offering circular.

''We have filed this offering circular with the Office of Thrift Supervision, but it has not been authorized for use in final form. We may complete or amend the information in this offering circular. We may not sell or accept offers to buy the shares covered by this offering circular before the Office of Thrift Supervision declares the offering circular effective. The offering circular is not an offer to sell or the solicitation of an offer to buy. We will not sell these shares in a state that prohibits offers, solicitations or sales before registration or qualification under the securities laws of that state.''

Item 5. Information with Respect to Exercise of Subscription Rights

In any offering circular that you will deliver to subscribers, you must describe all material terms of the offering relating to the exercise of subscription rights. You may exclude this information if you have already included this information in the proxy statement. Material terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Stock Selling Arrangements

In each offering circular you must describe the material terms of the plan or plans of distribution for all shares.

(a) You must include the following information in substantially the tabular form set forth below. You must set out this information on the outside front cover page of the offering circular.

	Price to public	Selling discounts and commissions	Proceeds to applicant
Per share	$	$	$
Total.			

(b) If there is a community offering or public offering, or both, you must provide an offering circular. You may omit the description relating to the exercise of subscription rights required by item 5, unless you commence your community offering or public offering, or both, simultaneously with your subscription offering.

(c) If you sell any shares through a community offering, you must indicate: (1) The timing for the offering, (2) the geographic area where you will make the offering, (3) the method you will employ to market the shares (including the frequency and nature of communications or contracts with potential purchasers), (4) any preferences that you will give to any geographic area or to any class of potential purchasers, and (5) the limitations on purchases by potential purchasers.

(d) If a selling agent assists in offering shares, you must identify the selling agent, disclose how the selling agent will offer the shares, and disclose the commissions and fees you will pay to the selling agent.

(e) If you will offer any shares through underwriters, you must include in the offering circular for the public offering the names of the principal underwriters and the amounts that each will underwrite. You may omit this information for principal underwriters, other than the managing underwriters, from the offering circular for the subscription offering if you include the following conditions: (1) that all subscription rights will be exercisable by delivery of order forms to the underwriters or selling group for the public offering; and (2) that orders of persons exercising subscription rights will be filled prior to orders for stock in the direct community or public offerings, or both. You must identify each principal underwriter that has a material relationship with you and describe the relationship. In each offering circular, you must state briefly the underwriter's obligation to take unsubscribed shares.

(f) You must briefly disclose in the offering circular the discounts and commissions that you may allow or may pay dealers in connection with the sale of unsubscribed shares for the community or public offering, or both. You may omit this information from the offering circular for any subscription offering, unless you use the subscription offering circular for the community offering or public offering, or both.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, or disposed of. Commissions also include understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. You must include any cash commissions in the table. You must describe other consideration you will make to the underwriters following the table with a reference in the second column of the table. You also must appropriately disclose any finder's fees or similar payments.

3. You must state whether the selling agents or underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or ''best efforts'' arrangement under which the selling agents or underwriters are required to take and pay for only the shares that they sell to the public.

OTS Form 1682, June 2000.

Appendix D—Form OF—Order Form

[Not to be codified in the Code of Federal Regulations]

Office of Thrift Supervision

Form OF—Order Form

Paperwork Reduction Act Statement

The Office of Thrift Supervision will use this information to ensure subscribers to Applicant's stock receive adequate disclosures regarding the purchase of Applicant's stock. *See* Part 563b and section 563.76.

Public reporting burden for this collection of information is estimated to average one hour, per response, including the time for reviewing instructions and completing and reviewing the collection of information. If a valid OMB Control Number does not appear on this form, you are not required to complete this form. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, the Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project (1550–0014), Washington, DC 20503.

Form OF—Order Form

Office of Thrift Supervision 1700 G Street, NW., Washington, DC 20552

Order Form for purchase of conversion shares

_____

(Name of Applicant in charter) (Docket No.)

_____

(Street address of Applicant)

_____

(City, State and Zip Code)

(1) After OTS declares your offering circular for the subscription offering effective, you must promptly distribute order forms for the purchase of shares of stock to: (a) All eligible account holders, (b) supplemental eligible account holders, and (c) other voting members who may subscribe for shares under the plan of conversion.

(2) You must provide a final offering circular for the subscription offering or any community or public offerings with the order form (unless you previously provided a final offering circular). You must include detailed instructions explaining how to complete the order forms.

(3) You must state the maximum subscription price on each order form. This amount is the amount that is payable to you when the subscriber returns the order form. You must establish a maximum subscription price and an actual subscription price that is within the subscription price range stated in OTS's approval and in the offering circular. If the maximum subscription price or the actual subscription price is not within the subscription price range, you must receive OTS approval to amend the range. If appropriate, OTS may require you to resolicit proxies and order forms as a condition to its approval. If the public offering price is less than the maximum subscription price on the order form, you must reduce the actual subscription price to correspond to the public offering price. You must refund the difference to those subscribers who paid the maximum subscription price, unless the subscriber affirmatively elects to apply the difference to the purchase of additional shares.

(4) You must describe in a simple, clear and intelligible manner the actions that are required or available to the persons who will receive the order form. Specifically, you must provide all of the following information:

(i) Indicate the maximum number of shares that the person may purchase under the subscription rights;

(ii) Indicate the time period during which the person must exercise the subscription rights. This period must be at least 20 days and not more than 45 days after you mail the subscription offering order form;

(iii) State the maximum subscription price per share;

(iv) Indicate any minimum share purchase requirements;

(v) Specifically designate blank space or spaces for the person to indicate the number of shares he or she wishes to purchase;

(vi) Indicate how the person must pay. If the person withdraws funds from a certificate of deposit, you must indicate that the person may withdraw the funds without penalty. If the person pays by withdrawing from a savings account or certificate of deposit, you must provide for the person to check a box on the order form. If a person pays by withdrawing from a savings account or certificate of deposit, you may, but need not, withdraw funds from the account when you receive the order form. If the person withdraws funds before the closing date of the public offering, you must pay interest to the account holder as if the amount remained in the account until the closing date;

(vii) Specifically designate blank spaces for the person to date and sign the order form;

(viii) Include an acknowledgment that the person who signed the order form received a final offering circular before he or she signed the form; and

(ix) Indicate what will happen if the person does not properly complete and return the order form. You must state that the person may not transfer the subscription rights to another and state that the subscription rights are void at the end of the subscription period. You must include in the instructions to the form the address where the person must send the order form and the date that you will deem the order form received, (for instance, by date and time of actual receipt at the indicated address, or by date and time of postmark.)

(5) You may state that no one may modify the order form without your consent.

(6) You must include the following statements in bold print in your order form:

(a) ''Federal Regulations prohibit any person from transferring or entering into any agreement directly or indirectly to transfer the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.''

(b) ''Under penalty of perjury, I certify that I,_____, am purchasing shares solely for my account and that there is no agreement or understanding regarding the sale or transfer of such shares, or my right to subscribe for shares.''

(7) You must also include the following separate one page certification.

''I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT.''

If anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the [*description of security being offered*] of [*name of issuer, name of savings association and affiliation to issuer (if different)*], I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment including: [list briefly the principle risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made.]

Signature _____

Date _____

OTS Form 1683, June 2000.

[FR Doc. 00–16347 Filed 7–11–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday,
July 12, 2000

Part III

Department of Commerce

Export Administration Bureau

15 CFR Part 740 et al.

Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6 and 9 of the Commerce Control List; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 772 and 774

[Docket No. 000616178–0178–01]

RIN 0694–AC19

Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6 and 9 of the Commerce Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5, 6 and 9 to conform with changes in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability. The purpose of this final rule is to make the necessary changes to the CCL to implement recently agreed revisions to the Wassenaar List of Dual-Use Goods and Technologies.

DATES: This rule is effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT: For questions of technical nature, the following persons in the Office of Strategic Trade are available:

Category 1: Robert Teer—(202) 482–4749

Category 2: Tanya Mottley—(202) 482–1837

Category 3: Hector Rivera—(202) 482–5534

Category 4: Patty Sefcik—(202) 482–0707

Category 5 (Telecommunications): Tony Koo—(202) 482–3206

Category 5 (Information Security): Patty Sefcik—(202) 482–0707

Category 6: Christopher Costanzo—(202) 482–0718

Category 9: Gene Christiansen—(202) 482–2984

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

On January 15, 1998, BXA published an interim rule (63 FR 2452) fulfilling U.S. commitments to the Wassenaar Arrangement by implementing the Wassenaar Arrangement list of dual-use items and imposing reporting requirements for exports of certain items controlled under the Wassenaar Arrangement.

On July 23, 1999, BXA published a final rule (64 FR 40106) that revised certain entries controlled for national security reasons to conform with the 1998 changes in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies agreed to by participating governments.

This final rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies. The most significant revisions include liberalizations in national security thresholds for microprocessors. A detailed description of revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 1—Materials, Chemicals, Microorganisms, and Toxins

1A001—amended by clarifying the term ''vinylether monomer'' to read ''vinylether group as a constitutional unit'' (1A001.c).

1C011—amended by (1) adding a new technical note to add hafnium as an impurity in the control of raw zirconium. This revision allows for the natural content of hafnium in zirconium (2–7%) to be counted with the zirconium (technical note to 1C011.a); and (2) adding nitroguanidine to the list of metals and compounds controlled by 1C011 (1C011.d). Previously nitroguanidine was controlled on the Munitions List (ML). This revision places nitroguanidine under control as a dual-use item on the Commerce Control List (CCL).

1C012—amended by revising the entry heading to remove the reference ''for nuclear heat sources'' and by revising the related definitions section to clarify that ''these materials are typically used for nuclear heat sources'' (1C012, Related Definitions).

1E002—amended by reformatting 1E002.c.1.c by merging the technical parameters of the note into 1E002.c.1.c.1 and by clarifying paragraphs c.1.c.2 and c.1.c.3. These reformatting revisions do not alter the scope of existing controls.

Category 3—Electronics

3A001—amended by (1) revising for clarity the phrase ''integrated circuits described in 3A001.a.3 to 3A001.a.10 or 3A001.a.12'' to provide a narrative description of the items identified by these paragraph references and by revising the phrase ''field programmable gate arrays'' to read ''field programmable logic devices'' (3A001.a.2); (2) increasing the composite theoretical performance (CTP) for microprocessors in 3A001.a.3.a from 260 million operations per second (MTOPS) to 3,500 MTOPS to account for technological advances and controllability factors (3A001.a.3.a); (3) removing the phrase ''maximum resolution'' from 3A001.a.5.a.1 to a.5.a.3 and adding a technical note to 3A001.a.5.b stating that ''a resolution of n bit corresponds to a quantization of 2n levels and a total conversion time is the inverse of the sample rate'' (3A001.a.5); (4) replacing the reference to ''gate arrays'' with ''logic devices'' in 3A001.a.7, combining the control criteria described in 3A001.a.8 into 3A001.a.7 to create a single entry for logic devices, and creating a note specifying that 3A001.a.7 includes Simple Programmable Logic Devices (SPLDss), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), Field Programmable Interconnects (FPICs) and adding a nota bene stating that field programmable logic devices are also known as field programmable logic arrays (3A001.a.7). These clarifications are designed to reflect new technology and terms; (5) removing from control on the CCL—impregnated cathodes designed for electronic tubes

with a turn on time to rate emission of less that 3 seconds (3A001.b.1.c.1). These impregnated cathodes are now controlled on the Munitions List and are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR, part 121); and (6) removing from control on the CCL—electromagnetic amplification at frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 Db, or at frequencies exceeding 31 GHz (3A001.d.1). These items are now controlled on the Munitions List and are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR, part 121).

3B002—amended by (1) liberalizing the pattern rate for testing integrated circuits from 60 MHz to 333 MHz and adding a technical note explaining which technical parameter should be used in defining the pattern rate (3B002.b); (2) clarifying that ''stored program controlled'' test equipment for testing microwave integrated circuits are controlled by 3A001.b.2 (3B002.c) and removing the duplicative decontrol note (decontrol note to 3B002.c), as this decontrol note is described by 3A001.b.2; (3) removing from national security controls, electronic beam systems and laser beams described by 3B002.d. These items continue to be subject to the CCL and remain controlled for antiterrorism reasons under 3B992.

3E002—amended by adding a new paragraph 3E002.g controlling control technology according to the General Technology Note (not controlled by 3E001) for the development or production of microprocessors above 530 MTOPS and an access width of 32 bits or more (3E001.g).

Category 5—Telecommunications, Part I

5A001—amended by: (1) revising for clarity the phrase '' 'spread spectrum' or 'frequency agility' (frequency hopping) techniques'' to read '' 'spread spectrum' techniques, including 'frequency hopping' techniques'' (5A001.b.3); and (2) revising decontrol notes to 5A001.b.3.b and 5A001.b.4 by stating that these subparagraphs do not control radio equipment specially designed for use with civil cellular radiocommunications (5A001.b.3 and b.4).

5B001—amended by removing national security controls on test equipment used to test radio equipment operating at input or output frequencies exceeding 31 GHz (5B001.b.4).

5D001—amended by removing national security controls on software used for the development of radio equipment operating at input or output frequencies exceeding 31 GHz (5D001.d.4).

5E001—amended by revising for clarity the phrase '' 'spread spectrum' or 'frequency agility' (frequency hopping) techniques'' to read '' 'spread spectrum' techniques, including 'frequency hopping' techniques'' (5E001.b.4).

Category 5—Information Security, Part 2

5A002—amended by (1) revising the phrase ''receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type'' to read ''receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type'' in paragraph c of the related controls section of 5A002; (2) revising the phrase '' 'spread spectrum' or the hopping code for 'frequency agility' systems'' to read '' 'spread spectrum' systems, including the hopping code for 'frequency hopping' systems'' (5A002.a.5). This revision is consistent with the revision made to 5A001.b.3.

Category 6—Sensors and Lasers

6A001—amended by (1) removing from control acoustic projectors designed to withstand pressure during normal operation at depths exceeding 1,000 m (6A001.a.1.c.3); (2) removing from control acoustic systems designed to withstand pressure during normal operation at depths exceeding 1,000 m (6A001.a.1.d.2) and reformatting 6A001.a.1.d by merging the technical parameters described in 6A001.a.1.d.1 into 6A001.a.1.d.; (3) revising 6A001.a.2.a by removing the reference to ''transducers'', adding a note specifying that the controls status of hydrophones specially designed for other equipment is determined by the control status of the other equipment and simplifying the control criteria for towed hydrophones arrays by establishing a clear 35 meter point of demarcation between commercial and military applications (6A001.a.2.).

6A002—amended by revising the second note to 6A002.a.3 for clarity.

6A003—amended by adding a note to 6A003.a specifying that instrumentation cameras controlled by 6A003.a.3 to a.5, with modular structures should be evaluated by their maximum capability, using electronic assemblies available according to the camera manufacturer's specifications (note to 6A003.a).

6A004—amended by adding a new paragraph 6A004.e to control for national security reasons certain aspheric optical elements. This revision is also accompanied by the addition of new technical notes and decontrol notes designed to clarify the scope of this new control. Due to the sensitive nature of these aspheric optical elements controlled by 6A004.e, a validated license is required to all destinations, except Canada for the technology for the development (6E001) and production (6E002) of these aspheric optical elements.

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

9B001—amended by removing national security controls on ceramic core manufacturing equipment or tools and ceramic shell wax pattern preparation equipment (9B001c. and d.).

9E003—amended by (1) adding national security controls on technology for components manufactured from composite material controlled by 1C010 and manufactured with resins controlled by 1C008 (9E003.a.3); and (2) removing national security controls on technology for rotor blade tip clearance control systems employing active compensating casing ''technology'' limited to a design and development data base (9E003.a.11 and a.12). This equipment will continue to be controlled for antiterrorism reasons under newly created ECCN 9E993.

Editorial Revisions of Notes, Technical Notes and Nota Bene

This final rule makes a number of conforming revisions to the CCL in order to provide consistency with the use of the terms Notes, Technical Notes and Nota Bene. These conforming revisions do not affect or change the scope of control, but merely provide consistency with the use of these terms. There is a common understanding that a Note could directly affect control status, whereas a Technical Note clarifies issues and a Nota Bene (N.B.) directs the reader to a related item or issue. Specific revisions on the CCL include: ECCNs 1C001, 1C006, 1C011, Technical Notes to Category 2B, ECCNs 2B007, 2B008, 3B001, Notes to Category 4, ECCNs 5A001, and 9E002.

In addition, this rule corrects inadvertent omissions to the CCL. These corrections include a minor editorial revision to 6A995.c.2.a.1 by correcting a typographic error and revisions to 9E003.a and .d to conform with previously agreed Wassenaar text.

Items placed under control will be subject to both national security (NS) and antiterrorism (AT) controls. These actions are taken in consultation with the Departments of State and Defense and pursuant to agreements reached in the Wassenaar Arrangement.

All items removed from national security (NS) controls as a result of the

Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

BXA is continuing a comprehensive review of the Commerce Control List (CCL) to account for items controlled by the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), and the Australia Group (AG) and to correct errors unavoidably reprinted in this version of the CCL. The review will be based in large part upon the comments received and upon ongoing efforts to harmonize the CCL with the EU's control list.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

Saving Clause

Shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until August 11, 2000. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for October 10, 2000, BXA will accept license applications for items described either by the entries in effect immediately before July 12, 2000 or the entries described in this rule.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of 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, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections have been approved by the Office of Management and Budget under control numbers 0694–0073, 0694–0106, and 0694–0088. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 772 and 774

Exports, Foreign trade.

Accordingly, parts 740, 772 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 740—[AMENDED]

4. Section 740.11 is amended by revising paragraph (a)(2) introductory text and paragraph (a)(2)(v) to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.1.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

* * * * *

(v) Bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems; and

* * * * *

5. Supplement No. 1 to section 740.11 is amended:

a. By revising paragraph (a)(1) introductory text;

b. By revising paragraph (a)(1)(v);

c. By revising paragraphs (a)(1)(vii)(C) and (a)(1)(vii)(D);

d. By revising paragraph (b)(1) introductory text;

e. By revising paragraph (b)(1)(v); and

f. By revising paragraphs (b)(1)(vii)(C) and (b)(1)(vii)(D), to read as follows:

Supplement No. 1 to § 740.11—Additional Restrictions on Use of License Exception Gov

(a) * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom:

1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

* * * * *

(v) Bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems; and

* * * * *

(vii) * * *

(C) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(D) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

* * * * *

(b) * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

* * * * *

(v) Bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems; and

* * * * *

(vii) * * *

(C) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

(D) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

* * * * *

PART 772—[AMENDED]

6. Part 772 is amended by removing the two definitions for ''Frequency agility'' [two references] and by adding a new definition ''Frequency hopping'' to be added in alphabetical order to read as follows:

PART 772—DEFINITIONS OF TERMS

''*Frequency hopping*''. (Cat 5 part 1 and 5 part 2)—A form of ''spread spectrum'' in which the transmission frequency of a single communication channel is made to change by a random or pseudo-random sequence of discrete steps.

* * * * *

PART 774—[AMENDED]

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 1A001, 1C001, 1C006, 1C011, and 1E002; and

b. By revising the entry heading and List of Items Controlled section for ECCN 1C012, to read as follows:

1A001 Components Made From Fluorinated Compounds, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: Items specially designed or modified for missiles or for items on the U.S. Munitions List are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121.)

Related Definitions: N/A.

Items:

a. Seals, gaskets, sealants or fuel bladders specially designed for ''aircraft'' or aerospace use made from more than 50% by weight of any of the materials controlled by 1C009.b or 1C009.c;

b. Piezoelectric polymers and copolymers made from vinylidene fluoride materials controlled by 1C009.a:

b.1. In sheet or film form; *and*

b.2. With a thickness exceeding 200 μm

c. Seals, gaskets, valve seats, bladders or diaphragms made from fluoroelastomers containing at least one vinylether group as a constitutional unit, specially designed for ''aircraft'', aerospace or missile use.

1C001 Materials Specially Designed for Use as Absorbers of Electromagnetic Waves, or Intrinsically Conductive Polymers, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: See also 1C101.

Related Definitions: N/A.

Items:

a. Materials for absorbing frequencies exceeding 2×10^8 Hz but less than 3×10^{12} Hz.

Note 1: 1C001.a does not control:

a. Hair type absorbers, constructed of natural or synthetic fibers, with non-magnetic loading to provide absorption;

b. Absorbers having no magnetic loss and whose incident surface is non-planar in shape, including pyramids, cones, wedges and convoluted surfaces;

c. Planar absorbers, having all of the following characteristics:

1. Made from any of the following:

a. Plastic foam materials (flexible or non-flexible) with carbon-loading, or organic materials, including binders, providing more than 5% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 450 K (177° C); *or*

b. Ceramic materials providing more than 20% echo compared with metal over a bandwidth exceeding ±15% of the center frequency of the incident energy, and not capable of withstanding temperatures exceeding 800 K (527° C);

Technical Note: Absorption test samples for 1C001.a. Note 1.c.1 should be a square at least 5 wavelengths of the center frequency on a side and positioned in the far field of the radiating element.

2. Tensile strength less than 7×10^6 N/m^2; *and*

3. Compressive strength less than 14×10^6 N/m^2;

d. Planar absorbers made of sintered ferrite, having:

1. A specific gravity exceeding 4.4; *and*

2. A maximum operating temperature of 548 K (275° C).

Note 2: Nothing in Note 1 releases magnetic materials to provide absorption when contained in paint.

b. Materials for absorbing frequencies exceeding 1.5×10^{14} Hz but less than 3.7×10^{14} Hz and not transparent to visible light;

c. Intrinsically conductive polymeric materials with a bulk electrical conductivity exceeding 10,000 S/m (Siemens per meter) or a sheet (surface) resistivity of less than 100 ohms/square, based on any of the following polymers:

c.1. Polyaniline;

c.2. Polypyrrole;

c.3. Polythiophene;

c.4. Poly phenylene-vinylene; *or*

c.5. Poly thienylene-vinylene.

Technical Note: Bulk electrical conductivity and sheet (surface) resistivity should be determined using ASTM D–257 or national equivalents.

1C006 Fluids and Lubricating Materials, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Barrels (55 U.S. gallons/209 liters).

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:

a.1. Synthetic or silahydrocarbon oils, having all of the following:

Technical Note: For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.1.a. A flash point exceeding 477 K (204° C);

a.1.b. A pour point at 239 K (−34° C) or less;

a.1.c. A viscosity index of 75 or more; *and*

a.1.d. A thermal stability at 616 K (343° C); *or*

a.2. Chlorofluorocarbons, having all of the following:

Technical Note: For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

a.2.a. No flash point;

a.2.b. An autogenous ignition temperature exceeding 977 K (704 °C);

a.2.c. A pour point at 219 K (−54 °C) or less;

a.2.d. A viscosity index of 80 or more; *and*

a.2.e. A boiling point at 473 K (200 °C) or higher;

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; or

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25 °C);

c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 μm or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids, having all of the following characteristics:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether-triazines or perfluoroaliphatic-ethers;

d.1.b. Perfluoroalkylamines;

d.1.c. Perfluorocycloalkanes; *or*

d.1.d. Perfluoroalkanes;

d.2. Density at 298 K (25 °C) of 1.5 g/ml or more;

d.3. In a liquid state at 273 K (0 °C); *and*

d.4. Containing 60% or more by weight of fluorine.

Technical Note: For the purpose of 1C006:

a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;

b. Pour point is determined using the method described in ASTM D–97 or national equivalents;

c. Viscosity index is determined using the method described in ASTM D–2270 or national equivalents;

d. Thermal stability is determined by the following test procedure or national equivalents:

Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);

The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6 °C) for six hours;

The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

1. The loss in weight of each ball is less than 10 mg/mm2 of ball surface;

2. The change in original viscosity as determined at 311 K (38 °C) is less than 25%; *and*

3. The total acid or base number is less than 0.40;

e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

1C011 Metals and Compounds, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: 1.) See also 1C111. 2.) Items controlled by 1C011.a, and metal fuels in particle form, whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99 percent or more of items controlled by 1C011.b. are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121).

Related Definitions: N/A.

Items:

a. Metals in particle sizes of less than 60 μm whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of zirconium, magnesium and alloys of these;

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

Note: The metals or alloys listed in 1C011. a are controlled whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium or beryllium.

b. Boron or boron carbide of 85% purity or higher and a particle size of 60 μm or less;

Note: The metals or alloys listed in 1C011.b are controlled whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium or beryllium.

c. Guanidine nitrate;

d. Nitroguanidine (NQ) (CAS 556–88–7).

1C012 Materials, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: N/A.

Related Definitions: These materials are typically used for nuclear heat sources.

Items:

a. Plutonium in any form with a plutonium isotopic assay of plutonium-238 of more than 50% by weight;

Note: 1C012.a does not control:

1. Shipments with a plutonium content of 1 g or less;

2. Shipments of 3 effective grams or less when contained in a sensing component in instruments.

b. Previously separated neptunium-237 in any form.

Note: 1C012.b does not control shipments with a neptunium-237 content of 1 g or less.

1E002 Other ''Technology'', as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: See also 1E102, 1E202, and 1E101 for ''technology'' related to 1E002.e.

Related Definitions: N/A.

Items:

a. ''Technology'' for the ''development'' or ''production'' of polybenzothiazoles or polybenzoxazoles;

b. ''Technology'' for the ''development'' or ''production'' of fluoroelastomer compounds containing at least one vinylether monomer;

c. ''Technology'' for the design or ''production'' of the following base materials or non-''composite'' ceramic materials:

c.1. Base materials having all of the following characteristics:

c.1.a. Any of the following compositions:

c.1.a.1. Single or complex oxides of zirconium and complex oxides of silicon or aluminum;

c.1.a.2. Single nitrides of boron (cubic crystalline forms);

c.1.a.3. Single or complex carbides of silicon or boron; *or*

c.1.a.4. Single or complex nitrides of silicon;

c.1.b. Total metallic impurities, excluding intentional additions, of less than:

c.1.b.1. 1,000 ppm for single oxides or carbides; *or*

c.1.b.2. 5,000 ppm for complex compounds or single nitrides; *and*

c.1.c. Being any of the following:

c.1.c.1. Zirconia with an average particle size equal to or less than 1 μm and no more than 10% of the particles larger than 5 μm;

c.1.c.2. Other base materials with an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm; *or*

c.1.c.3. Having all of the following:

c.1.c.3.a. Platelets with a length to thickness ratio exceeding 5;

c.1.c.3.b. Whiskers with a length to diameter ratio exceeding 10 for diameters less than 2 μm; *and*

c.1.c.3.c. Continuous or chopped fibers less than 10 μm in diameter;

c.2. Non-''composite'' ceramic materials composed of the materials described in 1E002.c.1;

Note: 1E002.c.2 does not control technology for the design or production of abrasives.

d. ''Technology'' for the ''production'' of aromatic polyamide fibers;

e. ''Technology'' for the installation, maintenance or repair of materials controlled by 1C001;

f. ''Technology'' for the repair of ''composite'' structures, laminates or

materials controlled by 1A002, 1C007.c or 1C007.d.

Note: 1E002.f does not control ''technology'' for the repair of ''civil aircraft'' structures using carbon ''fibrous or filamentary materials'' and epoxy resins, contained in aircraft manufacturers' manuals.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing is amended by revising the Technical Notes to Category 2B (Test, Inspection and Production Equipment), to read as follows:

Category 2—Materials Processing

* * * * *

B. Test, Inspection and Production Equipment

Notes for Category 2B

1. Secondary parallel contouring axes, (e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device (*e.g.*, a screw or a rack-and-pinion).

2. Axis nomenclature shall be in accordance with International Standard ISO 841, ''Numerical Control Machines—Axis and Motion Nomenclature''.

3. For the purposes of 2B001 to 2B009 a ''tilting spindle'' is counted as a rotary axis.

4. Guaranteed positioning accuracy levels instead of individual test protocols may be used for each machine tool model using the agreed ISO test procedure.

5. The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO 230/2 (1988)

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) 2B007 and 2B008 are amended by revising the List of Items Controlled section, to read as follows:

2B007 ''Robots'' Having Any of the Following Characteristics Described in the List of Items Controlled and Specially Designed Controllers and ''End-Effectors'' Therefor

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 2B207 and 2B997.

Related Definitions: N/A.

Items:

a. Capable in real time of full three-dimensional image processing or full three-dimensional scene analysis to generate or modify ''programs'' or to generate or modify numerical program data;

Technical Note: The scene analysis limitation does not include approximation of the third dimension by viewing at a given angle, or limited grey scale interpretation for the perception of depth or texture for the approved tasks (2½ D).

b. Specially designed to comply with national safety standards applicable to explosive munitions environments;

c. Specially designed or rated as radiation-hardened to withstand greater than 5×10^3 Gy (Si) without operational degradation; *or*

d. Specially designed to operate at altitudes exceeding 30,000 m.

2B008 Assemblies, Units or Inserts Specially Designed for Machine tools, or for Equipment Controlled by 2B006 or 2B007, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 2B998.

Related Definition: N/A.

Items:

a. Linear position feedback units (*e.g.,* inductive type devices, graduated scales, infrared systems or ''laser'' systems) having an overall ''accuracy'' less (better) than $(800+(600\times L\times 10^{-3}))$ nm (L equals the effective length in mm);

N.B.: For ''laser'' systems see also Note to 2B006.b.1.

b. Rotary position feedback units (*e.g.,* inductive type devices, graduated scales, infrared systems or ''laser'' systems) having an ''accuracy'' less (better) than 0.00025°;

N.B.: For ''laser'' systems see also Note to 2B006.b.1.

c. ''Compound rotary tables'' and ''tilting spindles'', capable of upgrading, according to the manufacturer's specifications, machine tools to or above the levels controlled by 2B001 to 2B009.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Numbers (ECCNs), are amended by revising the List of Items Controlled section for ECCNs 3A001, 3A991, 3B001, 3B002, 3B992 and 3E002, to read as follows:

3A001 Electronic Components, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 3A101, 3A201, and 3A991

Related Definitions: For the purposes of integrated circuits in 3A001.a.1, 5×10^3 Gy(Si)=5×10^5 Rads (Si); 5×10^6 Gy (Si)/s=5×10^8 Rads (Si)/s.

Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

''Monolithic integrated circuits'';

''Hybrid integrated circuits'';

''Multichip integrated circuits'';

''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;

''Optical integrated circuits''.

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher;

a.2. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing'', field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125° C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55° C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55° C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobiles or railway train applications.

a.3. ''Microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. A ''composite theoretical performance'' (''CTP'') of 3500 million theoretical operations per second (Mtops) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 μs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a ''settling time'' of less than 10 ns;

Technical Note:

1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and ''optical integrated circuits'' designed for ''signal processing'' having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.4 ns; *or*

a.7.c. A toggle frequency exceeding 133 Mhz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. Reserved.

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 208 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.35 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12 based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following:

a.12.a. A rated execution time for a 1,024 point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log_2 N$ /10,240 ms, where N is the number of points; *or*

a.11.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note: 3A001.b.1 does not control tubes designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an ''instantaneous bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being ''space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 Db;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing ''monolithic integrated circuits''; *and*

b.2.b. Operating at frequencies above 3 GHz;

Note: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an ''instantaneous bandwidth'' of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (F_{max}/F_{min}) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave ''assemblies'' capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: 3A001.b.8 does not control equipment designed or rated for operation in an ITU allocated band.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 Db;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 Db and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm3 (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28°C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527°C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ±2.5 seconds of arc.

3A991 Electronic Devices and Components Not Controlled by 3A001

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having a clock frequency exceeding 25 MHz;

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Field programmable logic devices having either of the following:

c.1. An equivalent gate count of more than 5000 (2 input gates); *or*

c.2. A toggle frequency exceeding 100 MHz;

d. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

d.1. More than 144 terminals; *or*

d.2. A typical ''basic propagation delay time'' of less than 0.4 ns.

e. Travelling wave tubes, pulsed or continuous wave, as follows:

e.1. Coupled cavity tubes, or derivatives thereof;

e.2. Helix tubes, or derivatives thereof, with any of the following:

e.2.a.1. An ''instantaneous bandwidth'' of half an octave or more; *and*

e.2.a.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

e.2.b.1 An ''instantaneous bandwidth'' of less than half an octave; *and*

e.2.b.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

f. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

g. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, ''signal processing'' devices employing elastic waves in materials), having either of the following:

g.1. A carrier frequency exceeding 1 GHz; *or*

g.2. A carrier frequency of 1 GHz or less; *and*

g.2.a. A frequency side-lobe rejection exceeding 55 Db;

g.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

g.2.c. A dispersive delay of more than 10 microseconds.

h. Batteries, as follows:

Note: 3A991.h does not control batteries with volumes equal to or less than 26 cm^3 (*e.g.*, standard C-cells or UM–2 batteries).

h.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

h.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

i. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.i does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

i.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

i.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

i.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm^2.

j. Circuits or systems for electromagnetic energy storage, containing components manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

j.1. Resonant operating frequencies exceeding 1 MHz;

j.2. A stored energy density of 1 MJ/M^3 or more; *and*

j.3. A discharge time of less than 1 ms;

k. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

l. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

3B001 Equipment for the Manufacturing of Semiconductor Devices or Materials and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 3B991.

Related Definitions: N/A.

Items:

a. ''Stored program controlled'' equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. ''Stored program controlled'' equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material ''substrate'';

c. ''Stored program controlled'' anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Magnetic confinement; *or*

c.1.b. Electron cyclotron resonance (ECR);

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Magnetic confinement; *or*

c.2.b. ECR;

d. ''Stored program controlled'' plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Magnetic confinement; *or*

d.1.b. ECR;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

d.2.a. Magnetic confinement; *or*

d.2.b. ECR;

e. ''Stored program controlled'' automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. ''Stored program controlled'' lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.5 μm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

Where the K factor = 0.7.
MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focussed electron beam, ion beam or ''laser'' beam, having any of the following:

f.2.a. A spot size smaller than 0.2 μm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 μm; *or*

f.2.c. An overlay accuracy of better than ± 0.20 μm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

3B002 ''Stored Program Controlled'' Test Equipment, Specially Designed for Testing Finished or Unfinished Semiconductor Devices and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Number.
Related Controls: See also 3B992.
Related Definitions: N/A.
Items:

a. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

b. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 333 MHz;

Note: 3B002.b does not control test equipment specially designed for testing:

1. ''Assemblies'' or a class of ''assemblies'' for home or entertainment applications;

2. Uncontrolled electronic components, ''assemblies'' or integrated circuits.

Technical Note: For purposes of 3B002.b, pattern rate is defined as the maximum frequency of digital operation of a tester. It is therefore equivalent to the highest data rate that a tester can provide in non-multiplexed mode. It is also referred to as test speed, maximum digital frequency or maximum digital speed.

c. For testing microwave integrated circuits controlled by 3A001.b.2.

3B992 Equipment Not Controlled by 3B002 for the Inspection or Testing of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor

* * * * *

List of Items Controlled

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Equipment specially designed for the inspection or testing of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the inspection or testing of semiconductor devices, integrated circuits and ''assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B992.b also controls equipment used or modified for use in the inspection or testing of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. ''Stored program controlled'' inspection equipment for the automatic detection of defects, errors or contaminants of 0.6 micrometer or less in or on processed wafers, ''substrates'', other than printed circuit boards or chips, using optical image acquisition techniques for pattern comparison;

Note: 3B992.b.1 does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

b.2. Specially designed ''stored program controlled'' measuring and analysis equipment, as follows:

b.2.a. Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

b.2.b. Equipment for line width measurement with a resolution of 1 micrometer or finer;

b.2.c. Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometer or less with a resolution of 1 micrometer or finer.

b.3. ''Stored program controlled'' wafer probing equipment having any of the following characteristics:

b.3.a. Positioning accuracy finer than 3.5 micrometer;

b.3.b. Capable of testing devices having more than 68 terminals; *or*

b.3.c. Capable of testing at a frequency exceeding 1 GHz;

b.4. Test equipment as follows:

b.4.a. ''Stored program controlled'' equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at frequencies exceeding 18 GHz;

Technical Note: Discrete semiconductor devices include photocells and solar cells.

b.4.b. ''Stored program controlled'' equipment specially designed for testing integrated circuits and ''assemblies'' thereof, capable of functional testing:

b.4.b.1. At a pattern rate exceeding 20 MHz; *or*

b.4.b.2. At a pattern rate exceeding 10 MHz but not exceeding 20 MHz and capable of testing packages of more than 68 terminals;

Note: 3B992.b.4.b does not control equipment specially designed for testing integrated circuits not controlled by 3A001 or 3A991.

Notes: 1. 3B992.b.4.b does not control test equipment specially designed for testing ''assemblies'' or a class of ''assemblies'' for home and entertainment applications.

2. 3B992.b.4.b does not control test equipment specially designed for testing electronic components, ''assemblies'' and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with ''user accessible programmability''.

b.4.c. Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using ''stored program controlled'' measurements or computer aided evaluation and having any of the following characteristics:

b.4.c.1. Using scanning light spot diameters of less than 0.12 mm;

b.4.c.2. Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; *or*

b.4.c.3. Designed for evaluating arrays capable of creating images with more than 32 × 32 line elements;

b.5. Electron beam test systems designed for operation at 3 keV or below, or ''laser'' beam systems, for non-contactive probing of powered-up semiconductor devices having any of the following:

b.5.a. Stroboscopic capability with either beam blanking or detector strobing;

b.5.b. An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; *or*

b.5.c. Electrical tests fixtures for performance analysis of integrated circuits;

Note: 3B992.b.5 does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

b.6. ''Stored program controlled'' multifunctional focused ion beam systems specially designed for manufacturing, repairing, physical layout analysis and testing of masks or semiconductor devices and having either of the following characteristics:

b.6.a. Target-to-beam position feedback control precision of 1 micrometer or finer; *or*

b.6.b. Digital-to-analog conversion accuracy exceeding 12 bit;

b.7. Particle measuring systems employing ''lasers'' designed for measuring particle size and concentration in air having both of the following characteristics:

b.7.a. Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 m^3 per minute or more; *and*

b.7.b. Capable of characterizing Class 10 clean air or better.

3E002 Other ''Technology'' for the ''Development'' or ''Production'' of Items Described in the List of Items Controlled

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: (1.) See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production'' related to radiation hardening of integrated circuits.

Related Definitions: N/A.

Items:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

c. ''Superconductive'' electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components.

g. ''Technology'' according to the General Technology Note other than that controlled in 3E001 for the ''development'' or ''production'' of ''microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits having a ''composite theoretical performance'' (''CTP'') of 530 million theoretical operations per second (Mtops) or more and an arithmetic logic unit with an access width of more than 32 bits or more.

Note: 3E002.g does not control ''technology'' for the ''development'' or ''production'' of: (a) Microwave transistors operating at frequencies below 31 GHz; (b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following: (1.) Using ''technology'' of 0.7 micrometer or more, and (2.) Not incorporating multi-layer structures. The term multi-layer structures in this entry does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising the Notes that immediately follow the Category heading, to read as follows:

Category 4—Computers

Note 1: Computers, related equipment and ''software'' performing telecommunications or ''local area network'' functions must also be evaluated against the performance characteristics of Category 5, Part 1 (Telecommunications).

Note 2: Control units that directly interconnect the buses or channels of central processing units, ''main storage'' or disk controllers are not regarded as telecommunications equipment described in Category 5, Part 1 (Telecommunications).

N.B: For the control status of ''software'' specially designed for packet switching, see ECCN 5D001. (Telecommunications).

Note 3: Computers, related equipment and ''software'' performing cryptographic, cryptoanalytic, certifiable multi-level security or certifiable user isolation functions, or that limit electromagnetic compatibility (EMC), must also be evaluated against the performance characteristics in Category 5, Part 2 (''Information Security'').

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications is amended by revising the List of Items Controlled section for Export Control Classification Numbers (ECCNs) 5A001, 5B001, 5D001, and 5E001, to read as follows:

5A001 Telecommunications Systems, Equipment, and Components

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 5A101 and 5A991.

Related Definitions: N/A.

Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. Specially designed to operate outside the temperature range from 218 K (−55 °C) to 397 K (124 °C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 Khz to 60 Khz;

b.1.b. Using an electromagnetic carrier frequency below 30 Khz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 Db suppression of an interfering signal; *or*

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and ''total digital transfer rates'' per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 MHz to 30 MHz frequency range or 250 W or more in the 30 MHz to 87.5 MHz frequency range, over an ''instantaneous bandwidth'' of one octave or more and with an output harmonic and distortion content of better than −80 Db;

b.3. Being radio equipment employing ''spread spectrum'' techniques, including ''frequency hopping'' techniques, having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 Khz;

Note: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4. Being digitally controlled radio receivers having all of the following:

b.4.a. More than 1,000 channels;

b.4.b. A ''frequency switching time'' of less than 1 ms;

b.4.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.4.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.4 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.5. Employing functions of digital ''signal processing'' to provide voice coding at rates of less than 2,400 bit/s.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×10^9 N/m^2 or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity

40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. ''Electronically steerable phased array antennae'' operating above 31 GHz.

Note: 5A001.d does not control ''electronically steerable phased array antennae'' for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

5B001 Telecommunication Test, Inspection and Production Equipment, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 5B991.

Related Definition: N/A.

Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment not using semiconductor ''lasers''.

b. Equipment and specially designed components or accessories therefor, specially designed for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

b.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

b.2. Equipment employing a ''laser'' and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing ''optical amplification'';

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the ''development'' of commercial TV systems.

b.3. Equipment employing ''optical switching'';

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

b.5. Equipment employing ''common channel signalling'' operating in either non-associated mode of operation or quasi-associated mode of operation.

5D001 ''Software'', as Described in the List of Items Controlled

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 5D991.

Related Definitions: N/A.

Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001 or 5B001.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E001.

c. Specific ''software'' as follows:

c.1. ''Software'' specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. ''Software'' which provides the capability of recovering ''source code'' of telecommunications ''software'' controlled by 5D001;

c.3. ''Software'', other than in machine-executable form, specially designed for ''dynamic adaptive routing''.

d. ''Software'' specially designed or modified for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

d.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

d.2. Equipment employing a ''laser'' and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b. does not control ''software'' specially designed or modified for the ''development'' of commercial TV systems.

d.3. Equipment employing ''optical switching''; *or*

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

5E001 ''Technology'' (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 5E101 and 5E991.

Related Definitions: N/A.

Items:

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features or ''software'' controlled by 5A001, 5B001 or 5D001.

b. Specific ''technologies'', as follows:

b.1. ''Required'' ''technology'' for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio systems;

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

c. ''Technology'' according the General Technology Note for the ''development'' or ''production'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment, functions or features:

c.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing ''optical amplification'' using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e. does not control ''technology'' for the ''development'' or ''production'' of commercial TV systems.

c.3. Equipment employing ''optical switching''; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5E001.c.4.b. does not control ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any ITU allocated band.

c.5. Equipment employing ''common channel signalling'' operating in either non-associated or quasi-associated mode of operation.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5, part 2—Information Security is amended by revising the List of Items Controlled section for Export Control Classification Number (ECCN) 5A002 to read as follows:

5A002 Systems, Equipment, Application Specific ''Electronic assemblies'', Modules and Integrated Circuits for ''Information security'', and Other Specially Designed Components Therefor

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: See also 5A992. This entry does not control: (a) ''Personalized smart cards'' where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this note. Note that if a ''personalized smart card'' has multiple functions, the control status of each function is assessed individually; (b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers; (c) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption; (d) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following: (1) Execution of copy-protected ''software''; (2) access to any of the following: (a) Copy-protected read-only media; *or* (b) Information stored in encrypted form on media (*e.g.,* in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; *or* (3) one-time encryption of copyright protected audio/video data; (e) Cryptographic equipment specially designed and limited for banking use or money transactions; (f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

Related Definitions: (1) The term ''money transactions'' in paragraph (e) of Related Controls includes the collection and settlement of fares or credit functions. (2) For the control of global navigation satellite systems receiving equipment containing or employing decryption (*e.g.*, GPS or GLONASS) see 7A005.

Items:

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security'', and other specially designed components therefor:

a.1. Designed or modified to use ''cryptography'' employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes:

1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. ''Cryptography'' does not include ''fixed'' data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use ''cryptography'' employing analog principles when implemented with digital techniques.

a.1.a. A ''symmetric algorithm'' employing a key length in excess of 56-bits; *or*

a.1.b. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptoanalytic functions;

a.3. [Reserved]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' systems, including the hopping code for ''frequency hopping'' systems;

a.6. Designed or modified to provide certified or certifiable ''multilevel security'' or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.7. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Exceptions and List of Items Controlled section for ECCN 6A001;

b. By revising the List of Items Controlled section for 6A002, 6A003, and 6A995;

c. By revising the License Requirements and List of Items Controlled sections for ECCN 6A004; and

d. By revising the License Exceptions section for ECCNs 6E001 and 6E002, to read as follows:

6A001 Acoustics

* * * * *

License Exceptions

LVS: $3000; N/A for 6A001.a.2.a.1, a.2.a.2, a.2.a.5, a.2.b; processing equipment controlled by 6A001.a.2.c, and specially designed for real time application with towed acoustic hydrophone arrays; a.2.e.1, a.2.e.2; and bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems.

GBS: Yes for 6A001.a.1.b.4.

CIV: Yes for 6A001.a.1.b.4.

List of Items Controlled

Unit: $ value.

Related Controls: See also 6A991.

Related Definitions: N/A.

Items:

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

Note: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; and

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9° *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 Khz;

a.1.b.2. Sound pressure level exceeding 224 Db (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 Khz to 24 Khz inclusive;

a.1.b.3. Sound pressure level exceeding 235 Db (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 Khz and 30 Khz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 Khz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

Notes: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a1.c. does not control electronic sources that direct the sound vertically only, or mechanical (*e.g.,* air gun or vapor-shock gun) or chemical (*e.g.,* explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 Khz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 mW/mm²/Hz for devices operating at frequencies below 10 Khz; *or*

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

or

a.1.c.3. Side-lobe suppression exceeding 22 Db;

a.1.d Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

Note: 6A001a.1.d includes:

a. Equipment using coherent ''signal processing'' between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

or

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

Note: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers;

a.2.a.2.b. Piezoelectric polymers; *or*

a.2.a.2.c. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than −180 Db at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.5. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of −160 Db (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of −180 Db sensitivity would yield only 10^{-9} V output. Thus, −160 Db is better than −180 Db.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or ''able to be modified'' to operate at depths exceeding 35m;

Technical Note: ''Able to be modified'' in 6A001.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.a.2.d;

a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; *or*

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ± 0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A002 Optical Sensors

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 6A102, 6A202, and 6A992.

Related Definitions: (1.) ''Image intensifiers'' defined in 6A002.a.2 and ''focal plane arrays'' defined in 6A002.a.3 specially designed, modified, or configured for military use and not part of civil equipment are subject to the export licensing authority of U.S. Department of State, Office of Defense Trade Controls (22 CFR part 121). (2.) ''Space qualified'' ''monospectral imaging sensors'', and ''multispectral imaging sensors'' defined in 6A002.b, and ''space-qualified'' ''focal plane arrays'' defined in 6A002.e, specially designed or modified for items on the U.S. Munitions List are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121).

Items:

a. Optical detectors, as follows:

Note: 6A002.a does not control germanium or silicon photodevices.

a.1. ''Space-qualified'' solid-state detectors, as follows:

a.1.a. ''Space-qualified'' solid-state detectors, having all of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b. ''Space-qualified'' solid-state detectors, having all of the following:

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response ''time constant'' of 95 ns or less;

a.1.c. ''Space-qualified'' solid-state detectors having a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 15 μm or less; *and*

a.2.a.3. Photocathodes, as follows:

a.2.a.3.a. S–20, S–25 or multialkali photocathodes with a luminous sensitivity exceeding 240 μmA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other III–V compound semiconductor photocathodes;

Note: 6A002.a.2.a.3.c does not control compound semiconductor photocathodes

with a maximum radiant sensitivity of 10 mA/W or less.

a.2.b. Specially designed components, as follows:

a.2.b.1. Microchannel plates having a hole pitch (center-to-center spacing) of 15 μm or less;

a.2.b.2. GaAs or GaInAs photocathodes;

a.2.b.3. Other III–V compound semiconductor photocathodes;

Note: 6A002.a.2.b.3 does not control compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.3. Non-''space-qualified'' ''focal plane arrays'', as follows:

Technical Note: Linear or two-dimensional multi-element detector arrays are referred to as ''focal plane arrays''.

Note 1: 6A002.a.3 includes photoconductive arrays and photovoltaic arrays.

Note 2:

6A002.a.3 does not control:

a. Silicon ''focal plane arrays'';

b. Multi-element (not to exceed 16 elements) encapsulated photoconductive cells using either lead sulphide or lead selenide;

c. Pyroelectric detectors using any of the following:

c.1. Triglycine sulphate and variants;

c.2. Lead-lanthanum-zirconium titanate and variants;

c.3. Lithium tantalate;

c.4. Polyvinylidene fluoride and variants; *or*

c.5. Strontium barium niobate and variants.

a.3.a. Non-''space-qualified'' ''focal plane arrays'', having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. A response ''time constant'' of less than 0.5 ns;

a.3.b. Non-''space-qualified'' ''focal plane arrays'', having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. A response ''time constant'' of 95 ns or less;

a.3.c. Non-''space-qualified'' ''focal plane arrays'', having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm.

b. ''Monospectral imaging sensors'' and ''multispectral imaging sensors'' designed for remote sensing applications, having any of the following:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 μr (microradians); *or*

b.2. Being specified for operation in the wavelength range exceeding 400 nm but not exceeding 30,000 nm and having all the following;

b.2.a. Providing output imaging data in digital format; *and*

b.2.b. Being any of the following:

b.2.b.1. ''Space-qualified''; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 mr (milliradians).

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating any of the following:

c.1. Image intensifier tubes having the characteristics listed in 6A002.a.2.a; *or*

c.2. ''Focal plane arrays'' having the characteristics listed in 6A002.a.3.

Technical Note: ''Direct view'' refers to imaging equipment, operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically or by any other means.

Note: 6A002.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. ''Space-qualified'' cryocoolers;

d.2. Non-''space-qualified'' cryocoolers, having a cooling source temperature below 218 K (−55 °C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers having bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.

e. ''Space qualified'' ''focal plane arrays'' having more than 2,048 elements per array and having a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm.

6A003 Cameras

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List of Items Controlled

Unit: Number.

Related Controls: See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.

Related Definitions: N/A.

Items:

a. Instrumentation cameras, as follows:

Note: Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using ''electronic assemblies'' available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μ.

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; *and*

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4×106^{6} ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×106^{6} ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; or

b.1.c. More than 12×106^{6} ''active pixels'' for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating ''focal plane arrays'' having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve elements or fewer, not employing time-delay-and-integration with the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; *or*

e. Medical equipment.

6A004 Optics

License Requirements

Reason for Control: NS, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

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List of Items Controlled

Unit: Equipment in number; cable in meters/feet; components in $ value.

Related Controls: See also 6A994.

Related Definitions: N/A.

Items: a. Optical mirrors (reflectors), as follows:

a.1. ''Deformable mirrors'' having either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors having an average ''equivalent density'' of less than 30 kg/m^2 and a total mass exceeding 10 kg;

a.3. Lightweight ''composite'' or foam mirror structures having an average ''equivalent density'' of less than 30 kg/m^2 and a total mass exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis, that maintain a flatness of lambda/2 or better (lambda is equal to 633 nm) having a control bandwidth exceeding 100 Hz.

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and having any of the following:

b.1. Exceeding 100 cm^3 in volume; *or*

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth).

c. ''Space-qualified'' components for optical systems, as follows:

c.1. Lightweighted to less than 20% ''equivalent density'' compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates having surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or having protective films;

c.3. Segments or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 m in diameter;

c.4. Manufactured from ''composite'' materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction.

d. Optical control equipment, as follows:

d.1. Specially designed to maintain the surface figure or orientation of the ''space-qualified'' components controlled by 6A004.c.1 or 6A004.c.3;

d.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 μr (microradians) or less;

d.3. Gimbals having all of the following:

d.3.a. A maximum slew exceeding 5°;

d.3.b. A bandwidth of 100 Hz or more;

d.3.c. Angular pointing errors of 200 μr (microradians) or less; *and*

d.3.d. Having any of the following:

d.3.d.1. Exceeding 0.15 m but not exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 2 r (radians)/s^2; *or*

d.3.d.2. Exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 0.5 r (radians)/s^2;

d.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a segment diameter or major axis length of 1 m or more.

e. Aspheric optical elements having all of the following characteristics:

e.1. The largest dimension of the optical-aperture is greater than 400 mm;

e.2. The surface roughness is less than 1 nm (rms) for sampling lengths equal to or greater than 1 mm; *and*

e.3. The coefficient of linear thermal expansion's absolute magnitude is less than 3×10^{-6}/K at 25° C;

Technical Notes:

1. An ''aspheric optical element'' is any element used in an optical system whose imaging surface or surfaces are designed to depart from the shape of an ideal sphere.

2. Manufacturers are not required to measure the surface roughness listed in 6A004.e.2 unless the optical element was designed or manufactured with the intent to meet, or exceed, the control parameter.

Note: 6A004.e does not control aspheric optical elements having any of the following:

a. A largest optical-aperture dimension less than 1 m and a focal length to aperture ratio equal to or greater than 4.5:1;

b. A largest optical-aperture dimension equal to or greater than 1 m and a focal length to aperture ratio equal to or greater than 7:1;

c. Being designed as Fresnel, flyeye, stripe, prism or diffractive optical elements;

d. Being fabricated from borosilicate glass having a coefficient of linear thermal expansion greater than $2.5 \times 10 - 6$/K at 25° C; *or*

e. Being an x-ray optical element having inner mirror capabilities (*e.g.*, tube-type mirrors).

N.B.: For aspheric optical elements specially designed for lithographic equipment, see 3B001.

6A995 ''Lasers'', Not Controlled by 6A005 or 6A205

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List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Carbon dioxide (CO_2) ''lasers'' having any of the following:

a.1. A CW output power exceeding 10 kW;

a.2. A pulsed output with a ''pulse duration'' exceeding 10 microseconds; *and*

a.2.a. An average output power exceeding 10 kW; *or*

a.2.b. A pulsed ''peak power'' exceeding 100 kW; *or*

a.3. A pulsed output with a ''pulse duration'' equal to or less than 10 microseconds; *and*

a.3.a. A pulse energy exceeding 5 J per pulse and ''peak power'' exceeding 2.5 kW; *or*

a.3.b. An average output power exceeding 2.5 kW;

b. Semiconductor lasers, as follows:

b.1. Individual, single-transverse mode semiconductor ''lasers'' having:

b.1.a. An average output power exceeding 100 MW; *or*

b.1.b. A wavelength exceeding 1,050 nm;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'', or arrays of individual semiconductor ''lasers'', having a wavelength exceeding 1,050 nm;

c. Solid state, non-''tunable'' ''lasers'', as follows:

c.1. Ruby ''lasers'' having an output energy exceeding 20 J per pulse;

c.2. Neodymium-doped (other than glass) ''lasers'', as follows, with an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm:

c.2.a. Pulse-excited, ''Q-switched lasers'', with a pulse duration equal to or more than 1 ns, and a multiple-transverse mode output with any of the following:

c.2.a.1. A ''peak power'' exceeding 200 MW; *or*

c.2.a.2. An average output power exceeding 50 W;

c.2.b. Pulse-excited, non-''Q-switched lasers'', having a multiple-transverse mode output with an average power exceeding 500 W; *or*

c.2.c. Continuously excited ''lasers'' having a multiple-transverse mode output with an average or CW output power exceeding 500 W;

d. Free electron ''lasers''.

6E001 ''Technology'' According to the General Technology Note for the ''Development'' of Equipment, Materials or ''Software'' Controlled by 6A (Except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (Except 6B995), 6C (Except 6C992 or 6C994), or 6D (Except 6D991, 6D992, or 6D993.

* * * * *

License Exceptions

CIV: N/A.

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) Items controlled by 6A004.e; *or*

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following:

(a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.l.3, 6B008, 6D003.a;

(b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when specially designed for real time applications; *or*

(c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A008.l.3 or 6B008.

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6E002 ''Technology'' According to the General Technology Note for the ''Production'' of Equipment or Materials Controlled by 6A (Except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (Except 6B995) or 6C (Except 6C992 or 6C994).

* * * * *

License Exceptions

CIV: N/A.

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) Items controlled by 6A004.e; *or*

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following:

(a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, and 6A001.a.2.c; and

(b) Equipment controlled by 6A001.a.2.e and 6A001.a.2.f when specially designed for real time applications; or

(c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A002.a.1.c, 6A008.l.3 or 6B008.

* * * * *

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment is amended as follows:

a. By revising the List of Items Controlled section for ECCNs 9B001, 9B991, 9E002, and 9E003; and

b. By adding a new ECCN 9E993, to read as follows:

9B001 Specially Designed Equipment, Tooling and Fixtures, as Follows (See List of Items Controlled), for Manufacturing or Measuring Gas Turbine Blades, Vanes or Tip Shroud Castings.

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: For specially designed production equipment of systems, sub-systems and components controlled by 9A005 to 9A009, 9A011, 9A101, 9A105 to 9A109, 9A111, and 9A116 to 9A119 usable in ''missiles'' see 9B115. See also 9B991.

Related Definitions: N/A.

Items:

a. Directional solidification or single crystal casting equipment;

b. Ceramic cores or shells.

9B991 Specially Designed Equipment, Tooling or Fixtures, Not Controlled by 9B001, as Described in the List of Items Controlled, for Manufacturing or Measuring Gas Turbine Blades, Vanes or Tip Shroud Castings.

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List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Automated equipment using non-mechanical methods for measuring airfoil wall thickness;

b. Tooling, fixtures or measuring equipment for the ''laser'', water jet or ECM/EDM hole drilling processes controlled by 9E003.c;

c. Ceramic core leaching equipment;

d. Ceramic core manufacturing equipment or tools;

e. Ceramic shell wax pattern preparation equipment;

f. Ceramic shell burn out or firing equipment.

9E002 ''Technology'' According to the General Technology Note for the ''Production'' of Equipment Controlled by 9A001.c, 9A004 to 9A011 or 9B (Except 9B990 or 9B991).

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: (1) See also 9E102. (2) See also 1E002.f for ''technology'' for the repair of controlled structures, laminates or materials. (3) The ''technology'' required for the ''development'' of equipment controlled by 9A004 is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.) (4) ''Technology'', required for the ''development'' of equipment or ''software'' subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls, is also subject to the same licensing jurisdiction. (See 22 CFR part 121).

Related Definitions: N/A.

Items:

The list of items controlled is contained in the ECCN heading.

9E003 Other ''Technology'', as Follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: N/A.

Related Controls: (1) Hot section ''technology'' specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the licensing authority of the U.S. Department of State. (2) ''Technology'' is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department of Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from the Department of State.

Related Definitions: N/A.

Items:

a. ''Technology'' ''required'' for the ''development'', ''production'', or overhaul of the following commercial aircraft engines, components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (SC) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000°C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540° C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic ''composite'' materials designed to operate above 588 K (315°C);

a.3.b. Metal ''matrix'' ''composite'', ceramic ''matrix'', intermetallic or intermetallic reinforced materials controlled by 1C007; *or*

a.3.c. ''Composite'' material controlled by 1C010 and manufactured with resins controlled by 1C008.

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050°C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370°C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using ''diffusion bonding'' ''technology'' controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles;

Note 1: Adjustable flow path geometry and associated control systems do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

Note 2: 9E003.a.10 does not control ''development'' or ''production'' ''technology'' for adjustable flow path geometry for reverse thrust.

a.11. Wide chord hollow fan blades without part-span support;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; *or*

b.2. ''Composite'' propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for the ''development'' or ''production'' of gas turbine engine components using ''laser'', water jet, ECM or EDM hole drilling processes to produce holes having any of the following sets of characteristics:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; *and*

c.1.c. Incidence angles equal to or less than 25°; *or*

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; *and*

c.2.c. Incidence angles of more than 25°;

Technical Note: For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. ''Technology'' ''required'' for any of the following:

d.1. The ''development'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems; *or*

d.2. The ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems;

e.1. ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1.a. A box volume of 1.2 m^3 or less;

e.1.b. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; *and*

e.1.c. A power density of more than 700 kW/m^3 of box volume;

Technical Note: Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; *or*

c. The diameter of the flywheel housing;

Height: The largest of the following:

a. The dimension of the crankshaft center-line to the top plane of the valve cover (or cylinder head) plus twice the stroke; *or*

b. The diameter of the flywheel housing.

e.2. ''Technology'' ''required'' for the ''production'' of specially designed components, as follows, for high output diesel engines:

e.2.a. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following components employing ceramics materials controlled by 1C007:

e.2.a.1. Cylinder liners;

e.2.a.2. Pistons;

e.2.a.3. Cylinder heads; *and*

e.2.a.4. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

e.2.b. ''Technology'' ''required'' for the ''production'' of turbocharger systems, with single-stage compressors having all of the following:

e.2.b.1. Operating at pressure ratios of 4:1 or higher;

e.2.b.2. A mass flow in the range from 30 to 130 kg per minute; *and*

e.2.b.3. Variable flow area capability within the compressor or turbine sections;

e.2.c. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8° C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8° C)), having both of the following:

e.2.c.1. Injection amount in excess of 230 mm3 per injection per cylinder; *and*

e.2.c.2. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

e.3. ''Technology'' ''required'' for the development'' or ''production'' of high output diesel engines for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450° C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

f. ''Technology'' not otherwise controlled in 9E003.a.1 through a.10 and currently used in the ''development'', ''production'', or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

9E993 Other ''technology'', not described by 9E003, as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A

TSR: N/A

List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Rotor blade tip clearance control systems employing active compensating casing ''technology'' limited to a design and development data base; *or*

b. Gas bearing for turbine engine rotor assemblies.

Dated: June 29, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–17154 Filed 7–11–00; 8:45 am]

BILLING CODE 3510–33–P

Federal Register

Wednesday,
July 12, 2000

Part IV

Securities and Exchange Commission

17 CFR Parts 210 and 240

Revision of the Commission's Auditor Independence Requirements; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release Nos. 33–7870; 34–42994; 35–27193; IC–24549; IA–1884; File No. S7–13–00]

RIN 3235–AH91

Revision of the Commission's Auditor Independence Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is soliciting comment on proposed rule amendments regarding auditor independence. The proposals modernize the Commission's requirements by providing governing principles for determining whether an auditor is independent in light of: investments by auditors or their family members in audit clients, employment relationships between auditors or their family members and audit clients, and the scope of services provided by audit firms to their audit clients. The proposals would, among other things, significantly reduce the number of audit firm employees and their family members whose investments in audit clients are attributed to the auditor. They would also identify certain non-audit services that, if provided to an audit client, would impair an auditor's independence. The scope of services proposals would not extend to services provided to non-audit clients. The proposals also would provide a limited exception for accounting firms that have certain quality controls and satisfy other conditions. Finally, the proposals would require companies to disclose in their annual proxy statements certain information about, among other things, non-audit services provided by their auditors during the last fiscal year.

DATES: Comments should be received on or before September 25, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–13–00; this file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's internet web site (http://www.sec.gov). [1]

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant, or W. Scott Bayless, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400, or with respect to questions about investment companies, John S. Capone, Chief Accountant, Division of Investment Management, at (202) 942–0590, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 2–01 of Regulation S-X [2] and Item 9 of Schedule 14A [3] under the Securities Exchange Act of 1934 (the ''Exchange Act''). [4]

I. Executive Summary

Independent auditors have an important public trust.[5] Every day, millions of people invest their savings in our securities markets in reliance on financial statements prepared by public companies and audited by independent auditors. [6] These auditors, using Generally Accepted Auditing Standards (''GAAS''), examine issuers'; financial statements and issue opinions about whether the financial statements, taken as a whole, are fairly presented in conformity with Generally Accepted Accounting Principles (''GAAP''). While an auditor's opinion does not guarantee the accuracy of financial statements, it furnishes investors with critical assurance that the financial statements have been subjected to a rigorous examination by an impartial and skilled professional and that investors can therefore rely on them. Providing that assurance to the public is the auditor's over-arching duty. [7]

Investors must be able to put their faith in issuers' financial statements. If investors do not believe that the auditor is truly independent from the issuer, they will derive little confidence from the auditor's opinion and will be far less likely to invest in the issuer's securities. Fostering investor confidence, therefore, requires not only that auditors actually be independent of their audit clients, but also that reasonable investors perceive them to be independent.

One of our missions is to promote investor confidence in the reliability and integrity of issuers' financial statements. To promote investor confidence, we must ensure that our auditor independence requirements remain relevant, effective, and fair in light of significant changes in the profession, structural reorganizations of accounting firms, and demographic changes in society. Some of the important developments in each of these areas since we last amended our auditor independence requirements in 1983 [8] include the following:

- Firms are becoming primarily business advisory service firms as they increase the number, revenues from, and types of non-audit services provided to audit clients,
- Firms and their audit clients are entering into an increasing number of business relationships, such as strategic alliances, co-marketing arrangements, and joint ventures,
- Firms are divesting significant portions of their consulting practices or restructuring their organizations,
- Firms are offering ownership of parts of their practices to the public, including audit clients,
- Firms are in need of increased capital to finance the growth of consulting practices, new technology, training, and large unfunded pension obligations,
- Firms have merged, resulting in increased firm size, both domestically and internationally,
- Firms have expanded into international networks, affiliating and marketing under a common name,
- non-CPA financial service firms have acquired accounting firms, and the acquirors previously have not been

[1] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] 17 CFR 210.2–01.

[3] 17 CFR 240.14a–101.

[4] 15 U.S.C. 78a *et seq*.

[5] This release uses the terms ''independent auditor,'' ''auditor,'' ''independent public accountant,'' ''accountant,'' and ''independent accountant'' interchangeably to refer to any independent certified or independent public account who performs an aduit of or reviews a public company's financial statements or whose report or opinion is filed with the Commission in accordance with the federal securities laws or the Commission's regulations.

[6] Public companies must have their annual financial statements audited by independent public accountants. *See, e.g.,* Items 25 and 26 of Schedule A to the Securities Act of 1933 (the ''1933 Act''), 15 U.S.C. 77aa(25) and (26) that expressly require that financial statements be audited by independent public or certified accounts. Public companies also must have their quarterly reports reviewed by independent accountants. *See, e.g.,* Article 10 of Regulation S–X, 17 CFR 210.10–01(d).

[7] The profession's principles of professional conduct state, ''Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism.'' American Institute of Certified Public Accountants (''AICPA'') Professional Standards: Code of Professional Conduct (''AICPA Code of Professional Conduct''), ET § 53.

[8] Financial Reporting Release (''FRR'') No. 10 (Feb. 25, 1983).

subject to the profession's independence, auditing, or quality control standards,

- Firms' professional staffs have become more mobile, and geographical location has become less important due to advances in telecommunications and internet services, and
- Audit clients are hiring an increasing number of firm partners, professional staff, and their spouses for high level management positions.

Having considered these and other developments and their effect on auditor independence, we are proposing rule amendments. The proposals start from the premise that investor confidence in auditor independence turns on whether auditors are in fact independent and appear to be independent. To strengthen the basis for that confidence, the proposals focus on those who can influence a particular audit. The proposals articulate four principles that would govern our determination of whether an accountant is independent of its audit client. Specifically, the proposals provide that an accountant is not independent whenever, during the audit and professional engagement period, the accountant: (i) Has a mutual or conflicting interest with the audit client, (ii) audits the accountant's own work, (iii) functions as management or an employee of the audit client, or (iv) acts as an advocate for the audit client.

The proposals then describe certain relationships which, when considered in light of these principles, render an accountant not independent of an audit client. The relationships addressed by the proposals include, among others, the financial and employment relationships between auditors (or their family members) and audit clients, and relationships between auditors and audit clients where the auditors provide certain non-audit services to their audit clients.

Financial and Employment Relationships. Current requirements attribute to an auditor ownership of shares held by widely dispersed audit firm personnel and their families. In light of some of the developments described above, these rules may unnecessarily restrict investment and employment opportunities available to firm personnel and their families. The proposals shrink significantly the circle of firm personnel whose investments are imputed to the auditor. They also shrink the circle of family members and former firm personnel whose employment impairs an auditor's independence.

Non-Audit Services. We have become increasingly concerned that the dramatic increase in the nature, number, and monetary value of non-audit services that accounting firms provide to audit clients may affect their independence. Accordingly, the proposals specify certain non-audit services that, if provided by an accounting firm to an audit client, impair an auditor's independence in light of the four governing principles.

For example, the proposals provide that an accounting firm would not be independent from an audit client to which the firm provides valuation and appraisal services. Some accounting firms provide these services to audit clients,[9] even though the firm's auditors must independently question the value of the appraised asset in auditing the audit client's financial statements. As such, the auditor may have participated actively in the process of developing asset values that are reported to investors in financial statements. The auditor then is required to challenge those same numbers during the audit. In this dual role as auditor and consultant, the accountant both oversees and answers to management, raising serious conflict of interest questions. Will the auditor be diligent and objective in reviewing the accounting firm's valuation work? If, during the audit, the auditor identifies a problem with the valuation or appraisal, will that auditor bring the problem to management's attention? Perhaps more important, even if the auditor made unbiased decisions, would investors believe that the auditor had been objective? [10]

The proposals do not extend to all non-audit services provided to audit clients. Not all non-audit services pose the same risk to independence. The proposals reflect what we believe to be a reasonable differentiation among various non-audit services, as well as our preference for narrowly drawn rules.

Quality Controls. Accounting firms and the public benefit when firms have effective quality controls that ensure the independence of audit professionals. These controls protect the public and the firms, on whose audits the public relies. Public companies benefit as well, since they are able to access capital at a lower cost through our capital markets. Therefore, for accounting firms that have certain quality controls, we are proposing a limited exception from the independence rules for certain independence failures that are cured promptly after discovery. This exception should encourage firms to institute controls to ensure the independence of the firm's personnel.

Disclosure of Non-Audit Services. Investors should have enough information to enable them to evaluate the independence of a company's auditors. The proposed rules would bring the benefits of sunlight to the auditor independence area by requiring companies to disclose in their annual proxy statements certain information about, among other things, the non-audit services provided by their auditors and the participation of leased personnel in performing the company's annual audit.

II. The Need To Preserve Auditor Independence

A. The Securities Laws Give Independent Auditors a Vital Mission and Responsibility

Capital formation depends on the willingness of investors to invest in the securities of public companies. Investors are more likely to invest, and pricing is more likely to be efficient, the greater the assurance that the financial information disclosed by issuers is reliable.[11] Independent auditors play a key role in providing that assurance. Auditors follow specified procedures set forth in GAAS and express their opinion

[9] *See* Independence Standards Board (''ISB''), ''Discussion Memorandum 99–3: Appraisal and Valuation Services,'' at 2–3 (Sept. 1999). The ISB was formed in 1997 to establish auditor independence standards applicable to audit and other attestation reports that are filed with us. Copies of standards issued by the ISB can be obtained from the ISB's web site at www.cpaindependence.org.

[10] As Statement on Auditing Standards No. 1 states, ''. . . an independent auditor auditing a company of which he was also a director might be intellectually honest, but it is unlikely that the public would accept him as independent since he would be in effect auditing decisions which he had a part in making. Likewise, an auditor with a substantial financial interest in a company might be unbiased in expressing his opinion on the financial statements of the company, but the public would be reluctant to believe that he was unbiased.'' AICPA Codification of Statements on Auditing Standards (''SAS'') No. 1, AU § 220.03. Indeed, a recent survey suggests that the complexity of the financial and business relationships between accounting firms and audit clients could diminish investors' confidence in the objectivity of auditors. In the 1999 study sponsored by the ISB, Earnscliffe Research & Communications found that many individuals interviewed believed that pressures on auditors have been increasing and are becoming problematic, and that ''auditors are developing a stronger interest in their relationship with management, perhaps at the expense of their responsibilities to shareholders.'' *See* Earnscliffe Research & Communications (''Earnscliffe''), *Report to the United States Independence Standards Board: Research into Perceptions of Auditor Independence and Objectivity,* at 9 (Nov. 1999) (''Earnscliffe Report'').

[11] *See generally* Codification of Financial Reporting Policies (the ''Codification'') § 601.01 (''[a]n investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest'').

on whether the financial statements, taken as a whole, fairly reflect the financial position, results of operations, and cash flows of the company.[12] Based on the independent auditor's opinion, investors have reason to believe that financial statements are materially accurate, fair, and complete.

The federal securities laws, to a significant extent, make independent auditors ''gatekeepers'' to the public securities markets.[13] These laws require, or permit us to require, financial information filed with us to be certified (or audited) by independent public accountants.[14] Without an opinion from an independent auditor, the company cannot satisfy the statutory and regulatory requirements for audited financial statements and cannot sell its securities to the public.[15] The auditor is the only professional that a company must engage before making a public offering of securities and the only professional charged with the duty to act and report independently from management. Because it is the issuer's responsibility to file independently audited financial statements, if the auditor is not independent, the issuer's filings are deficient under the securities laws.

In the fiscal year ended September 30, 1999, 13,460 public companies filed annual reports with the Commission. In the same period, the aggregate dollar volume for public offerings filed with the Commission was $2.1 trillion. While our staff reviews a great many filings, it is not able to review in detail all of the financial statements filed with us. We therefore must rely heavily on the accounting profession to be primarily responsible for the integrity of the large volume of financial information that forms the cornerstone of our full disclosure system.[16]

In creating this system, Congress granted the accounting profession an important public trust. Congress considered creating a corps of government auditors to review and audit companies' financial statements. Congress also considered mandating federal licensing of auditors. Instead, Congress entrusted the accounting profession with the responsibility of auditing the financial statements of companies registered with the SEC.[17] In so doing, Congress gave the accounting profession both an enormously valuable franchise and a bedrock public responsibility.[18]

The Supreme Court has underscored the significant and unique role of the auditor. In *United States* v. *Arthur Young & Co.,*[19] the Court considered whether to extend to auditors certain confidentiality protections available to legal counsel representing a client and preparing for trial. The Court refused to extend the protections, citing principally the differences between the roles of counsel and auditor. A lawyer, the Court noted, is a confidential advisor and advocate with a duty to present the client's case in the most favorable light. In contrast, the Court stated that the ''independent certified public accountant performs a different role. By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client * * * [and] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public.'' [20] According to the Court, ''This 'public watchdog' function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.'' [21] The Court's words largely echoed those of Congress,[22] the Commission,[23] and the accounting profession.[24]

B. Independence in Fact and Appearance

To fulfill the important role assigned to the auditor, the auditor must approach each audit with professional skepticism and must have a willingness and freedom to decide issues in an unbiased and objective manner, even when the auditor's decisions may be against the interests of management of

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[12] The opinion of the auditor appears in a report that must include the word ''independent.'' *See* AICPA SAS No. 58, AU § 508.08.

[13] Steven M. H. Wallman, ''The Future of Accounting and Disclosure in an Evolving World: The Need for Dramatic Change,'' *Accounting Horizons,* at 81 (Sept. 1995).

[14] For example, Items 25 and 26 of Schedule A to the 1933 Act, 15 U.S.C. 77aa(25) and (26), and Section 17(e) of the Exchange Act, 15 U.S.C. 78q, expressly require that financial statements be audited by independent public or certified accountants. Sections 12(b)(1)(J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78l and 78m, Sections 5(b)(H) and (I), 10(a)(1)(G), and 14 of the Public Utility Holding Company Act of 1935 (''PUHCA''), 15 U.S.C. 79e(b), 79j, and 79n, Sections 8(b)(5) and 30(e) and (g) of the Investment Company Act of 1940 (''ICA''), 15 U.S.C. 80a–8 and 80a–29, and Section 203(c)(1)(D) of the Investment Advisers Act of 1940 (''Advisers Act''), 15 U.S.C. 80b–3(c)(1), authorize the Commission to require the filing of financial statements that have been audited by independent accountants. Under this authority, the Commission has required that certain financial statements be audited by independent accountants. *See, e.g.,* Article 3 of Regulation S–X, 17 CFR 210.3–01 *et seq.* In addition, public companies must have their quarterly reports reviewed by independent accountants. Article 10 of Regulation S–X, 17 CFR 210.10–01(d) and Item 310(b) of Regulation S–B, 17 CFR 228.310(b). The federal securities laws also grant the Commission the authority to define the term ''independent.'' Section 19(a) of the 1933 Act, 15 U.S.C. 77s(a), Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), Section 20(a) of PUHCA, 15 U.S.C. 79t(a), and Section 38(a) of the ICA, 15 U.S.C. 80a–37(a), grant the Commission the authority to define accounting, technical, and trade terms used in each Act.

[15] ''An 'unqualified opinion' states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles.'' AICPA SAS No. 58, AU § 508.10.

[16] This regulatory regime has been recognized by the courts. *See, e.g., Touche Ross & Co.* v. *SEC,* 609 F.2d 570, 580–81 (2d Cir. 1979).

[17] Hearings on S. 875 Before the Senate Comm. on Banking and Currency, 73d Cong., 1st Sess. 55–60 (1933) (''1933 Senate Hearings''). During one hearing, Col. A. H. Carter, then president of the New York State Society of Certified Public Accountants, stressed the fact that outside accounting firms would be independent of management. During this discussion, Col. Carter, in differentiating between controllers employed by companies and independent accountants, stated, ''the public accountant audits the controller's accountant.'' Senator Barkley then asked, ''Who audits you?'' Col. Carter's oft-quoted reply was, ''Our conscience.'' *Id.* at 58.

[18] Payment of fees by the company to the auditor for performance of the audit and issuance of the auditor's opinion on the company's financial statements often is cited as a fundamental issue in the area of auditor independence. This fee structure was inherent in the decision by Congress in 1933 to have private sector auditors, rather than government employees, audit public companies. *Id.* Rather than being a reason for liberalization of the independence regulations, this payment structure should be a cause for exercising greater care by both companies and auditors in maintaining the auditor's independence. The National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange (''NYSE''), and the American Stock Exchange (''AMEX'') recently addressed this issue by changing their company listing standards to make it clear that the auditor is ultimately accountable to the board of directors and the audit committee, as opposed to management, and that the audit committee and the board of directors have the ultimate authority and responsibility to select, evaluate and, when appropriate, replace the auditor. *See* Order Approving Proposed Rule Change by the NASD, Exchange Act Rel. No. 42231, File No. SR–NASD–99–48 (Dec. 14, 1999); Order Approving Proposed Rule Change by the NYSE, Exchange Act Rel. No. 42233, File No. SR–NYSE–99–39 (Dec. 14, 1999); and Order Approving Proposed Rule Change by the AMEX, Exchange Act Rel. No. 42232, File No. SR–Amex–99–38 (Dec. 14, 1999).

[19] 465 U.S. 805 (1984).

[20] *Id.* at 817–18.

[21] *Id.* at 818.

[22] *See, e.g.,* Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d Sess., Federal Regulation and Regulatory Reform 35 (Subcomm. Print 1976) (also known as the Moss Report).

[23] *See, e.g.,* ''Relationships Between Registrants and Independent Accountants,'' Accounting Series Release (''ASR'') No. 296 (Aug. 20, 1981). *See also* Office of the Chief Accountant of the U.S. Securities and Exchange Commission, *Staff Report on Auditor Independence* (Mar. 1994) (''Staff Report'') for a detailed discussion of: (1) The background and need for auditor independence, (2) the current rules and interpretations of the Commission, the AICPA, and other nations, and (3) recent and proposed changes in those rules and interpretations.

[24] *See, e.g.,* AICPA SAS No. 1, AU § 220.03.

an audit client. According to a 1947 statement by the accounting profession, ''The independent auditor is under a responsibility peculiar to his profession to maintain strict independence of attitude and judgment in planning and conducting his examination and in expressing his opinion on financial statements.'' [25] Further, the AICPA's SAS No. 1 requires that ''in all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor * * * he must be without bias with respect to the client.'' [26]

Because a principal purpose of auditor independence is to provide assurance to investors, the accounting profession has long required independence not only in fact but also in appearance. SAS No. 1 states, ''Public confidence would be impaired by evidence that independence was actually lacking, and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence.'' [27] Accordingly, ''Independent auditors should not only be independent in fact; they should avoid situations that may lead outsiders to doubt their independence.'' [28]

The 1979 Report of the Public Oversight Board (''POB'') echoes the point, noting that the appearance of independence is itself ''a key ingredient to the value of the audit function, since users of audit reports must be able to rely on the independent auditor. If they perceive that there is a lack of independence, whether or not such a deficiency exists, much of that value is lost.'' [29] The Supreme Court made the same point in the *Arthur Young* decision:

The SEC requires the filing of audited financial statements in order to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the Nation's industries. It is therefore not enough that financial statements *be* accurate; the public must also *perceive* them as being accurate. Public faith in the reliability of a corporation's financial statements depends upon the public perception of the outside auditor as an independent professional. * * * If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost.[30]

Auditor independence involves assumptions about human behavior that cannot be easily verified. [31] While conflicts of interest are easily described, their actual impact on the ''objectivity'' of particular auditors can never be precisely known, because ''objectivity,'' as the AICPA's professional standards note, ''is a state of mind.'' [32]

For this reason, the appearance standard serves an important legal purpose. It supplements an inquiry into the auditor's actual, subjective state of mind with an objective test: whether reasonable persons, knowing all relevant circumstances, would perceive that an auditor is independent. As the words connote, the appearance standard confines the inquiry into what is apparent and does not require an inquiry into the auditor's actual state of mind. The appearance standard, it should be stressed, is not a matter of ''public relations.'' It does not require the auditor to guess how persons with only a superficial understanding of the relevant facts would view his or her actions. Appearance is measured only with respect to reasonable persons knowing all the relevant facts and circumstances.

Independence rules also must be prophylactic.[33] Auditor independence requires auditors ''to be alert to a number of rather subtle influences. . . . [T]here is a considerable range of individual abilities within the profession; some accountants are strong enough and alert enough to control themselves under the most adverse and perhaps even the most subtle influences; others are not so fortunate.'' [34] Our task in this area is to identify and address the influences that reasonably could be expected to pose an unacceptable risk that an auditor would lose his or her objectivity or that reasonable persons would perceive a loss of objectivity.

C. The New Business Environment Calls for Modernized Rules

In recent years, there have been significant demographic changes, changes in the accounting profession, and changes in the business environment that have affected accounting firms. Some of the more significant changes that have drawn attention to our auditor independence requirements include the increase in dual-career families, an ever-increasing mobility among professionals, a broadening international presence of accounting firms, and the growth and profitability of non-audit services offered by accounting firms to audit clients. These changes have led us to re-evaluate whether our auditor independence requirements remain effective, relevant, and fair.

1. Financial and Employment Relationships

We propose to update the requirements regarding financial and employment relationships between auditors or their family members and audit clients.[35] The existing requirements, among other things, attribute to the auditor investments of the relatives of the auditor ''in varying degrees depending on the closeness of the [family] relationship,'' [36] regardless of the amount of the holdings. They also attribute to auditors the investments of all partners and many professional employees in the accounting firm, as well as their families. The existing attribution rules may be too restrictive, since traditional family structures have changed, family members are more dispersed, there is increased mobility of professional employees, and accounting firms themselves are expanding around the globe. Accordingly, our proposals narrow many of these requirements,

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[25] The Council of American Institute of Accountants adopted an official statement on independence that was published in *The Journal of Accountancy* in July 1947.

[26] AICPA SAS No. 1, AU § 220.01–02.

[27] *Id.* at AU § 220.03.

[28] *Id.*

[29] POB, *Scope of Services by CPA Firms,* at 27 (Mar. 1979) (''1979 POB Report'') (quoting A. Arens and J. Loebbecke, *Auditing: An Integrated Approach* (Prentice-Hall 1976)).

[30] *Arthur Young, supra* note 19, at 819 n.15 (emphasis in original).

[31] The Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees noted with respect to independent directors that, even absent objective verification, ''* * * common sense dictates that a director without any financial, family, or other material personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting, internal control and reporting practices.'' The Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Committee''), *Report and Recommendations,* at 22 (1999) (the ''Blue Ribbon Report''). Copies of the Blue Ribbon Report are available at *www.nyse.com* or *www.nasd.com.*

[32] Article IV of the AICPA's Code of Professional Conduct provides, ''Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services.'' AICPA Code of Professional Conduct, ET § 55.01.

[33] Earnscliffe reports that ''[w]hile some believe that perceptions of the independence of auditors is already suffering some corrosion, more people take the view that damage is inevitable in the future if greater precautions are not taken to protect the perception of independence.'' Earnscliffe Report, *supra* note 10, at 46.

[34] R. K. Mautz and Hussein A. Sharaf, *The Philosophy of Auditing,* at 223 (Am. Acct. Ass'n 1961).

[35] *See* illustrations in Appendix C of how some of the proposed rules would apply. They are provided for illustrative purposes only and necessarily exclude certain important details set forth in the proposed rules.

[36] Codification § 602.02.h.

while protecting investor confidence in the reliability of financial information.

The proposals similarly narrow existing restrictions on the employment of auditors' family members, former audit firm employees, and former audit client employees who leave companies to work in audit firms. For example, with respect to employment restrictions on auditor's relatives, the proposals liberalize our existing position in several significant respects. First, the proposals reduce the pool of people within audit firms whose independence is required for an independent audit. Second, the proposals identify specific positions, namely those in which a person is in a position to or does influence the audit client's financial records, that would impair an auditor's independence if held by the auditor's relative. Finally, under the proposals, only positions at an audit client held by the auditor's ''close family members'' affect the auditor's independence. These proposals liberalize our current position and the ISB's position as reflected in its recent Invitation to Comment.[37]

2. Scope of Services

(a) *A Historical Perspective on the Provision of Non-Audit Services.* In the 1970s, Congress seriously considered limiting the services independent public accountants could provide that were not directly related to accounting, even though at that time non-audit services did not constitute a large percentage of audit firms' businesses.[38] Although Congress did not take action, in 1979, the Chairman of the POB warned the public about dangers arising from the growth of non-audit services:

The [POB] believes that there is possibility of damage to the profession and the users of the profession's services in an uncontrolled expansion of MAS to audit clients. Investors and others need a public accounting profession that performs its primary function of auditing financial statements with both the fact and the appearance of competence and independence. Developments which detract from this will surely damage the professional status of CPA firms and lead to suspicions and doubts that will be detrimental to the continued reliance of the public upon the profession without further and more drastic governmental intrusion.[39]

Our staff considered these issues in a 1994 Staff Report.[40] The Staff Report noted that much of the growth in non-audit services until then could be attributed to services provided to parties other than audit clients.[41] Accordingly, the Staff Report concluded that no change in our rules or the federal securities laws was warranted at that time, but the staff promised to ''continue to be alert to the development of problems of independence that may be caused by [non-audit services].''[42] The staff has kept a watchful eye on these matters.

Other industry observers also have followed developments in this area. After the Staff Report, there were at least three significant studies by the private sector and one by the General Accounting Office (''GAO''). These studies emphasized the continuing public concern regarding the objectivity and independence of auditors, particularly in light of the expansion of consulting and other non-audit services for audit clients. The Advisory Panel on Auditor Independence (also known as the Kirk Panel), in its September 1994 report, described the trend toward non-audit services as ''worrisome,'' because:

[g]rowing reliance on nonaudit services has the potential to compromise the objectivity or independence of the auditor by diverting firm leadership away from the public responsibility associated with the independent audit function, by allocating disproportionate resources to other lines of business within the firm, and by seeing the audit function as necessary just to get the benefit of being considered objective and to serve as an entree to sell other services. . . .[43]

Similarly, the AICPA Special Committee on Financial Reporting (also known as the Jenkins Committee), in its 1994 report, found that users of financial statements believed that non-audit service relationships could ''erode auditor independence.'' The Report noted:

[Users] also are concerned that auditors may accept audit engagements at marginal profits to obtain more profitable consulting engagements. Those arrangements could motivate auditors to reduce the amount of audit work and to be reluctant to irritate management to protect the consulting relationship.[44]

Two years later, in 1996, GAO completed a thorough review of the accounting profession. In its report, GAO noted:

GAO . . . believes that questions of auditor independence will probably continue as long as the existing auditor/client relationship continues. This concern over auditor independence may become larger as accounting firms move to provide new services that go beyond traditional services. The accounting profession needs to be attentive to the concerns over independence in considering the appropriateness of new services to ensure that independence is not impaired and the auditor's traditional values of being objective and skeptical are not diminished.[45]

Most recently, in 1999, Earnscliffe conducted interviews to assess the perceptions of different audiences about

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[37] *See* ISB, ''Invitation to Comment 99–1: Family Relationships Between the Auditor and the Audit Client'' (July 1999).

[38] *See* Report on Improving the Accountability of Publicly Owned Corporations and Their Auditors, Subcomm. on Reports, Accounting and Management of the Senate Comm. on Governmental Affairs, 95th Cong., 1st Sess. (Comm. Print Nov. 1977). In the Report, the Subcommittee stated that it ''agrees with the Cohen commission and many others that the accounting profession must improve its procedures for assuring independence in view of the public's needs and expectations. Several activities of independent auditors have raised questions. Among them are public advocacy on behalf of a client, receiving gifts and discounts from clients, and maintaining relationships which detract from the appearance of arm's-length dealings with clients. Such activities are not appropriate.'' *Id.* at 16. The subcommittee also stated that ''[t]he best policy * * * is to require that independent auditors of publicly owned corporations perform only services directly related to accounting. Non-accounting management services . . . should be discontinued.'' *Id.* at 16–17.

In a letter to Harold Williams, Chairman, SEC, Senator Thomas F. Eagleton, Chairman, Subcomm. on Governmental Efficiency and the District of Columbia, of the Senate Comm. on Governmental Affairs, recommended that ''[t]here must be a requirement that independent auditors of publicly owned corporations perform only services directly related to accounting.'' Letter from Senator Thomas F. Eagleton to Harold Williams, dated Apr. 6, 1978 (reprinted in Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role (July 1978)).

[39] Letter from John J. McCloy, Chairman, POB (former Chairman of the Board of Chase Manhattan Bank and former President of The World Bank), to Walter E. Hanson, Chairman, Executive Committee, SEC Practice Section (''SECPS''), dated March 9, 1979, at 2.

[40] Staff Report, *supra* note 23, at 27–34. Between 1979 and 1981, public companies were required to disclose in their proxy statements certain information about non-audit services provided by their auditors. *See infra* Section II.C.4. (discussing these disclosure requirements). In the late 1980s, several of the large public accounting firms filed a petition with us seeking to enter into joint ventures, limited partnership agreements, and other similar arrangements with audit clients. *See* Letter from Jonathan G. Katz, Secretary, SEC, to Duane R. Kullberg, Arthur Andersen & Co., dated Feb. 14, 1989 (denying the petition). In 1990, the staff stated that if certain conditions were met, it would not object to Arthur Andersen & Co.'s conclusion that certain business relationships between Andersen Consulting and audit clients of Arthur Andersen & Co. may be considered indirect business relationships. *See* Letter from Edmund Coulson, Chief Accountant, SEC, to Robert Mednick, Arthur Andersen & Co., dated June 20, 1990.

[41] Staff Report, *supra* note 23, at 33. *See infra* notes 47–67 and accompanying text (showing dramatic increase in nature, number, and dollar amount of non-audit services provided to audit clients since the issuance of the Staff Report).

[42] Staff Report, *supra* note 23, at 34.

[43] Advisory Panel on Auditor Independence, *Report to the Public Oversight Board of the SEC Practice Section, AICPA: Strengthening the Professionalism of the Independent Auditor,* at 9 (Sept. 13, 1994).

[44] Special Committee on Financial Reporting, AICPA, *Improving Business Reporting—A Customer Focus: Meeting the Information Needs of Investors and Creditors,* at 104 (1994).

[45] GAO, *The Accounting Profession—Major Issues: Progress and Concerns,* at 8 (GAO/AIMD–96–98, Sept. 1996) (the ''GAO Report'').

auditor independence. In conclusion, Earnscliffe reported that, ''Most [interviewees] felt that the evolution of accounting firms to multi-disciplinary business service consultancies represents a challenge to the ability of auditors to maintain the reality and the perception of independence. . . .'' [46]

Taken together, these studies suggest that important constituencies see a connection between the business scope of accounting firms and auditor independence.

(b) *Recent Developments.* The menu of services offered by the firms to audit clients has grown dramatically and continues to grow. [47] Attached to this release, for commenters' convenience, is a list of services that auditors provide to their audit and non-audit clients.[48] Companies appear to be turning to their auditors for performance of their internal audit, pension, financial, administrative, sales, data processing, and marketing functions, among others.[49]

U.S. revenues for management advisory and similar services [50] for the five largest public accounting firms amounted to more than $15 billion in 1999, based on amounts calculated from data published in the Public Accounting Report.[51] Revenues for these service lines are now estimated to constitute half of the total revenues for these firms.[52] In contrast, these service lines provided only 13 percent of total revenues in 1981.[53] From 1993 to 1999, the average annual growth rate for revenues from management advisory and similar services has been 26 percent; comparable growth rates have been 9 percent for audit, and 13 percent for tax services.[54]

For the largest firms, the growth in management advisory and similar services involves both audit clients and non-audit clients. For the largest public accounting firms, MAS fees from audit clients have increased significantly over the past two decades. In 1984, only one percent of audit clients of the eight largest public accounting firms paid MAS fees that exceeded the audit fee.[55] The percent of Big 5 audit clients that paid MAS fees in excess of audit fees did not exceed 1.5 percent until 1997.[56] In 1999, 4.6 percent of Big 5 audit clients paid MAS fees in excess of audit fees,[57] an increase of over 200% in two years. For the five largest public accounting firms, MAS fees received from audit clients amounted to ten percent of all revenues in 1999.[58] Almost three-fourths of audit clients purchased no MAS from their auditors in 1999. This means that purchases of MAS services by one-fourth of firm's audit clients account for ten percent of all firm revenues.[59] In addition, the magnitude of MAS fees received from SEC registrants appears to distinguish the five largest accounting firms from other firms. The MAS fees received by the approximately 800 accounting firms with 1,000 or fewer SEC registrants as audit clients represent approximately one percent or less of total fees on average.[60]

Certain transactions raise questions about auditor independence. Some smaller firms are consolidating their audit practices and seeking public investors in the resulting company.[61] Other firms are entering into agreements to sell all of their assets except their audit practices to established financial services companies. As part of these agreements, the financial services companies also hire the employees of the accounting firm, and then lease back the majority or all of the assets and audit personnel to the ''shell'' audit firm. These lease arrangements allow the financial service firm to pay the professional staff for ''nonprofessional'' services for the corporate organization as well as professional attest services rendered for the audit firm.[62]

In February 2000, Ernst & Young announced that it would sell its management-consulting business to Cap Gemini Group SA, a large and publicly-traded computer services company headquartered in France.[63] KPMG recently split off its consulting business into a separate corporation (KPMG Consulting, Inc.), sold preferred stock convertible to between 18.2% and 19.9% of its outstanding stock to Cisco Corporation, and announced its intention to sell additional shares to the public in an initial public offering.[64] PricewaterhouseCoopers has publicly announced its intention to re-structure its audit and consulting businesses along similar lines.[65]

Under certain circumstances, these transactions could lead to violations of the independence rules, since the financial interests and relationships of the newly formed consulting entities would be imputed to the auditing firms. At a minimum, these transactions could raise serious public policy issues by creating relationships between firms and shareholders, strategic investors, and companies providing services to audit clients. In the case of Ernst & Young, our Chief Accountant, by no-action letter, stated that the Office of the Chief Accountant would not assert that Ernst & Young's independence from an audit client has been impaired solely because that audit client is also a client of, enters into a business relationship with, or is invested in by Cap Gemini. That no-action relief was based on, among other things, Ernst & Young's representations that: (1) Following the initial sale to Cap Gemini, Ernst & Young's equity interest would be reduced to zero within five years, (2) Ernst & Young would play no role in the corporate governance of the consulting company, and (3) Ernst & Young would

[46] Earnscliffe Report, *supra* note 10, at 46.

[47] Some firms are seeking to provide expanded services through joint ventures with audit clients or their affiliates. As noted above, as early as 1988, large public accounting firms were looking to enter into joint ventures, limited partnership agreements, and other similar arrangements with audit clients. *See* Letter from Jonathan G. Katz to Duane R. Kullberg, *supra* note 40.

[48] *See* Appendix A. The list was prepared by the ISB. *See* ISB, ''Discussion Memorandum 99–2: Evolving Forms of Firm Structure and Organization'' (Oct. 1999). Although the list is long, it is not comprehensive. Commentators may wish to review accounting firms' web sites and other sources for additional information about the services being provided by accounting firms.

[49] *See, e.g.,* ''KPMG spies rapid growth in 'shared services','' *Accounting Today*, at 12 (June 3–16, 1996); ''KPMG Restructures to Reposition Outsourcing,'' *Public Accounting Report*, at 1 (May 15, 1996).

[50] Management advisory services (''MAS'') are a subset of non-audit services.

[51] *See* Table 1 in Appendix B. The underlying data are reported in ''Special Supplement: Annual Survey of National Accounting Firms—2000,'' *Public Accounting Report* (Mar. 31, 2000).

[52] *See* Tables 1 and 2 in Appendix B.

[53] *See* Table 2 in Appendix B.

[54] *See* Table 1 in Appendix B.

[55] *See* Table 3 in Appendix B.

[56] *See* Table 3 in Appendix B.

[57] *See* Table 3 in Appendix B.

[58] *See* Table 4 in Appendix B.

[59] *See* Table 3 in Appendix B. Taken together, the data from tables 1, 3, and 4 indicate that in 1999 more than 12,700 clients of the five largest public accounting firms paid approximately $9.150 billion for accounting and auditing services. During that same period, approximately 3,300 of those companies that are SEC registrants paid approximately $3.062 billion for MAS and similar non-audit services.

[60] *See* Table 4 in Appendix B.

[61] *See, e.g.,* Rick Telberg, ''Anybody can do it! says small-firm consolidator,'' *Accounting Today,* at 5 (Jan. 4–24, 1999).

[62] ''Done Deal: HRB acquires M&P for $240 million cash, pension obligation,'' *Public Accounting Report,* at 1 (July 15, 1999); ''AmEx and Checkers Close The Deal,'' *Public Accounting Report,* at 1 (Mar. 31, 1997).

[63] ''Cap Gemini and Ernst & Young Have Agreed to Terms for the Acquisition of Ernst & Young Consulting'' (Feb. 29, 2000) (press release of Ernst & Young) (available at www.ey.com).

[64] KPMG Consulting, Inc., Form S–1, filed May 5, 2000.

[65] Diane B. Henriques, ''Auditing Firm Plans to Split Its Businesses,'' N.Y. Times, Feb. 18, 2000, at C8.

not have any co-marketing arrangements with the new entity.[66]

(c) *How Non-Audit Services Can Affect Auditor Independence.* The dramatic expansion of non-audit services may fundamentally alter the relationships between auditors and their audit clients in two principal ways. First, as auditing becomes an ever-smaller portion of a firm's business with its audit clients, auditors become increasingly vulnerable to economic pressures from audit clients. Second, certain non-audit services, by their very nature, raise independence issues. These concerns, described more fully below, have led us to consider whether our rules should limit—or even completely bar—an auditor's provision of non-audit services to audit clients.

(i) *Auditor Vulnerability to Economic Pressure From Audit Clients.* Large non-audit engagements [67] may make it harder for auditors to be objective when examining their client's financial statements. Under any circumstances, it can be difficult for an auditor to make a judgment that works against the audit client's interest. Where making that judgment may imperil a range of service engagements of the firm, of which the audit is a fairly small part, it may be unrealistic to expect that an auditor can ignore completely what the firm stands to lose by the auditor's action.

Our concern is not just that an auditor will give in to a client. It is that, as auditors become involved in a broad array of business arrangements with their clients, they come to be seen by themselves, their firms, their clients, and investors less as exacting, skeptical professionals who must be satisfied before signing off on the financial statements, and more like any other service vendor who must satisfy the client to make the sale.[68]

An expanded menu of relationships with an audit client may also give rise to a mutuality of interest between the auditor and client. This would be a significant concern in any era, but it may be especially important in an era when many ventures go quickly from start-up to apparent success to failure. For example, an audit firm may agree to perform the audit of a start-up company for fees significantly below market rates for a few years, in anticipation of ''recouping'' such an investment in the client through a subsequent initial public offering or performance of consulting services.

We also have concerns about the effect on an accounting firm's internal culture when the firm is trying to be an audit client's vendor of choice. As non-audit services become more important to a firm, that firm may care less about auditing and more about expanding its service lines. The factors that drive a high quality audit, including the core values of the auditing profession, may diminish in importance to the firm, as will the influence of those firm members who exemplified those core values in their own professional careers.

There appears to be growing public concern about audit firms' increasing provision of various non-audit services, and skepticism that firm safeguards adequately protect the fact and appearance of independence. Earnscliffe reports that auditors, audit committee chairs, chief executive officers, analysts, and regulators all, to some degree, recognize the independence risks posed by multifaceted relationships between auditors and their audit clients.[69] A majority of the Earnscliffe respondents felt that internal firm safeguards ''might ultimately be insufficient to sustain confidence in the independence of auditors.'' According to the Report, those respondents

> . . . felt that the judgement of observers would turn on how the financial incentives and penalties were organized: if it appeared that a firm had more upside in bending to a client's pressures, then internal processes would only be of limited value. Not everyone felt that this was the perception today, rather they were offering the view that internal firm safeguards had limited prophylactic value if the scrutiny were to become more punishing.[70]

(ii) *Independence Issues Inherent in the Nature of Certain Non-audit Services.* Providing certain non-audit services to an audit client can lead an audit firm to have a mutual or conflicting interest with the client, audit its own work, advocate a position for the client, or function as an employee or management of the client.[71] Auditor independence concerns arise, for example, when a company hires its audit firm to perform valuations of in-process research and development.[72] When an auditor in effect, even if not in form, makes decisions for management, he or she functions as a member of the management team and may develop a ''mutuality of interest'' with the audit client. After all, a ''consultant . . . will be judged by the ultimate usefulness of his advice in bringing success to management's efforts. He has had a hand in shaping managerial decisions and will be judged by management on the same basis that the management itself will be judged. How then can he claim to be completely independent?'' [73] The consultant is accountable to management, in contrast to the auditor, who must ''acknowledge[] no master but the public.'' [74]

(d) *Measuring Independence Impairments.* Some argue that no empirical evidence justifies our concerns. They argue that there is no evidence that providing non-audit services in general—much less particular types of non-audit services—leads to false financial reporting. Without this evidence, the argument goes, the Commission should not take steps to protect auditor independence.

It is common sense, however, and confirmed by studies, that a person's decision changes when he or she has a stake in the outcome of that decision. [75]

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[66] Letter from Lynn E. Turner, Chief Accountant, SEC, to Kathryn A. Oberly, Esq., Ernst & Young, dated May 25, 2000 (available at www.sec.gov).

[67] In 1999, Big 5 accounting firms received higher fees for MAS and other consulting services than for audits from approximately 600 audit clients. *See* Table 3 in Appendix B.

[68] Earnscliffe reports, ''The large majority of interviewees in each segment (including auditors) have sensed that in recent years accounting firms have lost their preoccupation with audits, and become much more preoccupied with growing new areas of consulting revenue. Many felt that within firms, the psychic and financial rewards were tilted heavily towards the consulting side, and that auditors who wanted to be well compensated and respected by peers, needed to support the growth of non-audit functions. This perception was even shared by a fair number of auditors. . . .'' Earnscliffe Report, *supra* note 10, at 14.

See also Statement of PricewaterhouseCoopers, ''In essence, we have become an organisation trying to follow two missions at the same time. One goal has been to assure financial market integrity and provide investor protection. The other has been to help clients succeed by guiding them through complex, large-scale business transformations. One goal demands objectivity and independence. The other demands a direct interest in our clients' success.'' Wall St. J., Feb. 22, 2000, at A17.

[69] Earnscliffe Report, *supra* note 10, at 28, 37–41.

[70] *Id.* at 20. Regarding the lack of effective safeguards, *see generally* ''Report of the Internal Investigation of Independence Issues at PricewaterhouseCoopers LLP'' (Jan. 6, 2000) (available on our web site, www.sec.gov). *See also* Letters from Lynn Turner, Chief Accountant, SEC, to Michael Conway, Chairman, SECPS Executive Committee, dated Nov. 30, 1998 and May 1, 2000.

[71] *See generally* Paul M. Clikeman, ''Auditor Independence: Continuing Controversy,'' Ohio CPA J. (Apr.-June 1998); Mautz and Sharaf, *supra* note 34, at Ch. 8.

[72] *See infra* Section III.D.1.(b) (regarding the types of services that raise independence concerns).

[73] Mautz and H. Sharaf, *supra* note 34, at 222.

[74] Gary John Previts, T*he Scope of CPA Services* 33 (John Wiley & Sons, 1985) (citing Charles Reckitt, *The Public Accountant* (Philadelphia 1900)).

[75] *See* Max H. Bazerman, Kimberly P. Morgan, and George F. Loewenstein, ''The Impossibility of Auditor Independence,'' *Sloan Management Review*, at 89–94 (Summer 1997) (reviewing empirical research showing that ''[w]hen people are called on to make impartial judgments, those judgments are likely to be unconsciously and powerfully biased in a manner that is commensurate with the judge's selfinterest,'' and concluding that, despite their best intentions, ''there is good reason to believe that auditors will unknowingly misrepresent facts and will

Furthermore, common sense dictates that the more someone—including an auditor—has at stake, the more likely his or her decision is to be affected.

Studies cannot always confirm what common sense makes clear. Except where an auditor accepts a payment to look the other way,[76] is found to have participated in a fraudulent scheme,[77] or admits to being biased, it is largely impossible to observe an auditor's state of mind or know whether an auditor's mind is ''objective.'' It is even harder to measure the impact a particular financial arrangement has on the auditor's state of mind. And it is similarly impossible to tie a questionable state of mind to a wrong judgment, a failure to notice something important, a failure to seek important evidential matter, a failure to challenge a management assertion, or a failure to consider the quality—not just the acceptability—of a company's financial reporting.[78] This is particularly true because auditing misjudgments may often go unnoticed.[79] As the POB noted, ''Specific evidence of loss of independence through MAS, a so-called smoking gun, is not likely to be available even if there is such a loss.'' [80]

Whatever the effect of non-audit service relationships on an auditor's conduct, there can be little question about the effect of these impairments on investor confidence. Gradual decreases in investor confidence may not be measurable, but their cumulative economic impact could not be more palpable. Investor confidence in the integrity of publicly available financial information is the cornerstone of our securities markets. That confidence is hard won and easily lost, and the Commission must act to protect it.

(e) *Whether to Prohibit All Non-Audit Services*. In developing these proposals, we considered whether independence is impaired whenever an auditor provides *any* non-audit service to an audit client, or whether certain non-audit services do not impair independence. We have tentatively concluded, pending public comment, that the better approach is to permit some significant non-audit services, though several factors weigh in favor of a blanket ban.

Prohibiting only some non-audit services does not address the increasing vulnerability of auditors to their audit clients and the corresponding link between the financial health of auditors and their clients. These concerns do not turn on the nature of the non-audit service involved, but arise simply because of the growing interdependence of auditor and client.

In addition, distinguishing between permissible and impermissible types of services raises difficult questions about services that do not fall squarely into precise categories. These questions will get only harder in the future as firms move to provide new and unforeseen services.

Finally, an approach that tries to distinguish between permissible and impermissible types of services depends heavily upon daily interpretations by the very firms the rules are intended to affect. In light of the powerful economic interests at stake, there is serious question whether it is fair or reasonable to expect accounting firms to evaluate the impact of new services on their own impartiality.

Despite these doubts, we believe that the measured approach we propose—establishing basic principles for evaluating any non-audit services' impact on independence, and identifying specific services that are plainly incompatible with independence—protects investor confidence in the audit process while allowing auditors to provide those services that are not reasonably viewed as creating a bias in the auditor. Our goal is to preclude non-audit services only to the extent necessary to protect the integrity and independence of the audit function. Of course, therefore, the proposals do not extend to services provided to non-audit clients.

3. *Quality Controls*

As accounting firms become more global and their business relationships with their audit clients become more complex, the need for quality controls to address independence becomes more apparent. Without strong quality controls, it may be difficult or impossible for an accounting firm to understand whether its independence may be impaired. For example, firms need quality controls to track whether the firm, or any covered person in the firm, has any direct investment in an audit client.

Our staff has stated that certain firms, particularly larger firms with public company clients, may lack sufficient worldwide quality controls.[81] The staff has urged certain firms to review existing quality controls and ensure that particular areas are covered.[82] Moreover, designing and implementing quality controls is not a one-time responsibility. We encourage accounting firms to continue to invest in state-of-the-art systems that can identify conflicts at an early stage to ensure a swift response. The speed of the response to a conflict, or potential conflict, is important to maintain public confidence in the self-regulatory process and the effectiveness of quality controls.[83]

We understand that many firms are already designing and implementing quality controls. We recently announced a voluntary compliance program, in which the Big 5 accounting firms agreed to report past violations of auditor independence rules.[84] In connection with the program, the firms also have agreed to design and implement quality controls specified by our Chief Accountant and have the POB issue public reports on the results of their efforts. The rules we propose today are intended to encourage firms to design and implement effective quality controls to address independence. Toward that end, the rules contain a limited exception for firms that have appropriate quality controls and meet other conditions.

4. *Proxy Disclosure*

From 1978 to 1982, we required companies to disclose in their proxy statements all non-audit services provided by their auditors.[85] We also required companies to include a statement of the percentage of the fees for all non-audit services compared to total audit fees, the percentage of the fee for each non-audit service compared to

unknowingly subordinate their judgment due to cognitive limitations''); *see also* Robert A Prentice, ''The SEC and MDP: Implications of the Self-Serving Bias for Independent Auditing,'' Ohio St. L.J. (Fall 2000) (forthcoming).

[76] *See, e.g., SEC* v. *Jose Gomez*, Accounting and Auditing Enforcement Release (''AAER'') No. 57 (May 8, 1985).

[77] *See, e.g., SEC* v. *Christopher Bagdasarian and Sam White*, AAER No. 825 (Sept. 26, 1996).

[78] *See* AICPA SAS No. 90, AU § 380.11. Independence lapses perhaps are most likely to affect this gray area, where the answers are more a matter of judgment than of bright-line rule, and where judgments are out of the public view.

[79] Of course, all of these factors make it equally impossible to demonstrate empirically that an auditor's economic interests do *not* adversely affect the quality of the audit.

[80] 1979 POB Report, *supra* note 29, at 34 n.103. As the POB noted, ''[T]he Board recognizes that the nonexistence of such evidence does not necessarily mean that there have not been instances where independence may have been impaired. Not all situations where an auditor's objectivity is compromised will result in a lawsuit.'' *Id.* at 35.

[81] *See* Letter from Lynn Turner, Chief Accountant, SEC, to Charles Bowsher, Chairman, POB, dated Dec. 9, 1999; *see, e.g., In the Matter of PricewaterhouseCoopers, LLP*, AAER No. 1098 (Jan. 14, 1999).

[82] *See* Letters from Lynn Turner, Chief Accountant, SEC, to Michael Conway, *supra* note 70.

[83] *See id.*

[84] SEC Press Release, ''All Big 5 Accounting Firms Agree to Participate in Voluntary Program to Address Independence Violations; Safe Harbor Provided for Certain Violations'' (June 7, 2000).

[85] For a concise discussion of the Commission's previous rulemaking efforts in this area, *see* Staff Report, *supra* note 23, at 27–34.

total audit fees, and a statement whether each non-audit service was considered and approved by the audit committee of the board of directors or by the board itself.[86]

In connection with the disclosure requirement, we published an interpretive release[87] describing certain factors that independent accountants, audit committees, boards of directors, and managements should consider in determining whether a company's independent accountant should be engaged to perform non-audit services. These factors included the auditor's dependence on non-audit fees, the possibility of the auditor supplanting management's role in making corporate decisions, the possibility of creating a situation where an auditor may be required to review its own work, and the relation of the non-audit activity to accounting and auditing skills.

Although our concerns regarding the provision of consulting and other non-audit services remained unchanged, we later determined to rescind the formal interpretive release[88] and the proxy disclosure requirement.[89] Among other reasons, our review of proxy disclosures convinced us that accounting firms were not providing extensive non-audit services to their audit clients. Our review of the 1979 and 1980 proxy disclosures of approximately 1,200 registrants showed that fees paid by audit clients for non-audit services generally constituted a relatively small fraction of registrants' audit fees.[90] In addition, we noted that, even without the proxy disclosure requirement, investors had access to useful data concerning the relative levels of audit and non-audit services provided by firms to their audit clients. In particular, we noted that summarized information regarding the relationship between MAS and audit fees was provided to the SECPS by member firms and was publicly available. We also concluded that the efforts of audit committees and the accounting profession to monitor firms' provision of non-audit services generally had been effective.

As discussed above, however, in recent years there has been a dramatic growth in the number of non-audit services provided to audit clients and the magnitude of fees paid for non-audit services.[91] Moreover, there may be less information available to investors about these services since the SECPS has stopped publishing information about audit firms' provision of non-audit services. Further, information provided by the SECPS describes the mix of services provided by an accounting firm to all of its clients, while an investor generally is primarily interested in the services provided to an individual company. This information is not currently available.

Under circumstances where investors have less information about a matter that has become more important, we believe a disclosure requirement may once again prove useful to investors. Accordingly, we propose to reinstate a requirement that companies include in their proxy statements certain disclosures about non-audit services provided by their auditors during the last fiscal year. As we did while the requirement was in effect twenty years ago, we expect that both we and investors will learn from these disclosures and that they will have an impact on audit committees, investors, and accounting firms.[92] Disclosure may be particularly effective now that investors have unprecedented access to information about companies in which they invest. We believe that investors should have access to information regarding the company's auditors when making investment decisions and when voting to elect, approve, or ratify the selection of, the accounting firm as the principal auditor of a company's financial statements.

We also believe that audit committees, as well as management, should engage in active discussions of independence issues with the outside auditors. According to the Blue Ribbon Report, ''If the audit committee is to effectively accomplish its task of overseeing the financial reporting process, it must rely, in part, on the work, guidance and judgment of the outside auditor. Integral to this reliance is the requirement that the outside auditors perform their service without being affected by economic or other interests that would call into question their objectivity and, accordingly, the reliability of their attestation.'' [93]

Recently, the ISB adopted ISB Standard No. 1, which requires each auditor to disclose in writing to its client's audit committee, all relationships between the auditor and the company that, in the auditor's judgment,[94] reasonably may be thought to bear on independence, and to discuss the auditor's independence with the audit committee.[95] Furthermore, we recently adopted new disclosure rules regarding audit committees and auditor reviews of interim financial information, in response to recommendations made by the Blue Ribbon Committee.[96] These new rules

[86] ''Disclosure of Relationships with Independent Public Accountants,'' ASR No. 250 (June 29, 1978). Prior to the implementation of this disclosure requirement, a private commission established by the AICPA (The Commission on Auditor's Responsibilities, known as the ''Cohen Commission'') reviewed the performance of non-audit services by auditors. The Cohen Commission found that outside of executive search and placement services, there was no evidence that the performance of such services compromised auditor independence. In spite of this finding, the Cohen Commission urged the accounting profession to take steps to diminish the concerns of a ''significant minority'' and recommended that the performance of non-audit services be evaluated by audit committees or boards of directors, and that registrants or auditors appropriately disclose such services. The Commission on Auditors' Responsibilities, AICPA, *Report, Conclusions, and Recommendations*, at 100–04 (1978).

[87] ''Scope of Services by Independent Accountants,'' ASR No. 264 (June 14, 1979).

[88] In withdrawing the interpretive release, we reaffirmed our views regarding the need for caution in the provision of non-audit services:

Although the Commission's views expressed in [the interpretive release] are unchanged and registrants and accountants must continue to carefully evaluate their relationships to ensure that the public maintains confidence in the integrity of financial reporting, the Commission is withdrawing that release because it may confuse independent accountants, audit committees and others who are trying to evaluate services performed or to be performed by the accountants. Moreover, the Commission believes it has achieved its objective in issuing [the interpretive release]. Accountants and their self-regulatory structure, audit committees, boards of directors and managements are aware of the Commission's views on accountants' independence and should be sensitive to the possible impact on independence of nonaudit services performed by accountants. The Commission believes it should be able to rely on these persons to ensure adequate consideration of the impact on accountants' independence of nonaudit services because they share the responsibility to assure that the public maintains confidence in the independence of accountants.

ASR No. 296, *supra* note 23.

[89] ''Rescission of Certain Accounting Series Releases and Adoption of Amendments to Certain Rules of Regulation S-X Relating to Disclosure of Maturities of Long-Term Obligations,'' ASR No. 297 (Aug. 20, 1981).

[90] ASR No. 296, *supra* note 23.

[91] *See supra* Section II.C.; see also Appendix B.

[92] The effect of the proposed disclosure would be similar to disclosure of management's discussion and analysis of financial condition and results of operations. *See* Item 303 of Regulation S–K, 17 CFR 229.303.

[93] Blue Ribbon Report, *supra* note 31, at 40.

[94] In a letter to the SECPS, ISB Chairman William Allen clarified the use of the auditor's judgment under the standard. He stated:

[I]n asking itself whether a fact or relationship is material in this setting the auditor may not rely on its professional judgment that such fact or relationship does not constitute an impairment of independence. Rather the auditor is to ask, in its informed good faith view, whether the members of the audit committee who represent reasonable investors, would regard the fact in question as bearing upon the board's judgment of auditor independence.

Letter from William T. Allen, Chairman, ISB, to Mr. Michael A. Conway, Chairman, Executive Committee, SECPS, dated Feb. 8, 1999. We believe that Chairman Allen's interpretation is appropriate.

[95] ISB Standard No. 1, ''Independence Discussions with Audit Committees'' (Jan. 1999).

[96] ''Audit Committee Disclosure,'' Exchange Act Rel. No. 42266 (Dec. 22, 1999). Companies also

require that companies include in their proxy statements reports of their audit committees that state whether, among other things, the audit committees have received the written disclosures and the letter from the independent auditors required by ISB Standard No. 1,[97] and discussed with the auditors the auditors' independence. Our new requirements, and the new requirements of the ISB, the New York Stock Exchange, the National Association of Securities Dealers, Inc. and the American Stock Exchange[98] should encourage auditors, audit committees, and management to have robust and probing discussion of all issues that might affect investors' views of the auditor's independence.

D. The Need for a More Accessible Auditor Independence Framework

Currently, our auditor independence requirements are found in various Commission rules and interpretations. These have been supplemented over the years by staff letters, staff reports, and ethics rulings by the accounting profession.[99] Current Rule 2–01 of Regulation S–X sets forth the circumstances under which we will not recognize an accountant as independent.[100] Because Rule 2–01 does not address particular factual situations, we and our staff have issued interpretations of Rule 2–01 in response to public companies' questions about particular situations.[101] The proposed revisions to Rule 2–01 would consolidate and make more accessible the standards for auditor independence under the federal securities laws, reemphasize its importance, and provide a comprehensive framework for evaluating auditor independence. The proposed proxy disclosures, if adopted, should add to the body of knowledge regarding the provision of non-audit services.

The new rules should also assist the ISB in its work. In FRR No. 50,[102] we stated that we would look to the ISB to provide leadership in improving auditor independence requirements and in establishing and maintaining a body of independence standards applicable to auditors of public companies.[103] In the same manner, we previously have endorsed the establishment of the Financial Accounting Standards Board (''FASB'').[104] Among other things, the ISB sets standards and its staff answers day-to-day inquiries regarding the application of our auditor independence requirements to specific situations confronting auditors and their clients.

The ISB has requested more guidance from us. For example, the ISB noted in ISB Standard No. 2,[105] the standard would not take effect until the SEC revises its rules on independence. Accordingly, our proposals and the attendant modifications to the Codification, if adopted, would enhance the ability of the ISB to make its standards effective. In addition, by providing a comprehensive framework, the new rules, if adopted, should assist the ISB in making future decisions regarding auditor independence matters.[106]

III. Discussion of Proposed Rules

A. Qualifications of Accountants

Section 2–01(a) would remain unchanged and require that in order to practice before the Commission an auditor must be in good standing and entitled to practice in the state of the auditor's residence or principal office. This requirement has existed since the Federal Trade Commission first adopted rules under the 1933 Act.[107] It acknowledges our deference to the states for the licensing of public and certified public accountants.

B. The General Standard for Auditor Independence

Proposed rule 2–01(b) sets forth the basic test of an auditor's independence. Under that test, we will not recognize as independent an accountant who, with respect to an audit client, is not, or would not be perceived by reasonable investors to be, capable of exercising objective and impartial judgment on all

should note the requirement to disclose interests and relationships with its auditors under Item 509 of Regulation S–K, 17 CFR 229.509, and Item 509 of Regulation S–B, 17 CFR 228.509.

[97] ISB Standard No. 1, *supra* note 95.

[98] Orders Approving Proposed Rule Changes by AMEX, NASD, and NYSE, *supra* note 18.

[99] We have brought a number of enforcement cases in which we charged auditors with violations of the independence rules. *See, e.g., In the Matter of Pricewaterhouse Coopers, LLP,* AAER No. 1098 (Jan. 14, 1999); *In the Matter of Moore Stephens, et al.*, AAER No. 1135 (May 19, 1999).

[100] Rule 2–01 states:

(a) The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

(b) The Commission will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (1) in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he, his firm, or a member of his firm had, or was committed to acquire, any direct financial interest or any material indirect financial interest; (2) with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he, his firm, or a member of his firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm's independence will not be deemed to be affected adversely where a former officer or employee of a particular person is employed by or becomes a partner, shareholder or other principal in the firm and such individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his employment by the person. For the purposes of § 210.2–01(b), the term ''member'' means (i) all partners, shareholders, and other principals in the firm, (ii) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (iii) any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

(c) In determining whether an accountant may in fact be not independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.

17 CFR 210.2–01.

[101] Many of the interpretations are reprinted in Section 600 of the Codification. These interpretations include selected text from FRRs that explain the background, provide interpretive guidance for disclosure rules that promote auditor independence, and describe examples in which the staff and the Commission made a determination about a particular auditor's independence. Although the Commission updates the Codification to include the text from releases as rules are amended, the examples in the Codification have not been revised since 1983. *See* FRR No. 10, *supra* note 8. Since 1982, instead of waiting until there are a sufficient number of interpretations to warrant a Commission release that would amend the Codification, the Commission staff has placed its independence interpretive letters in a file where they are immediately available to the public. *See* FRR No. 33 (Oct. 17, 1988) and FRR No. 4 (Oct. 14, 1982).

[102] FRR No. 50 (Feb. 18, 1998).

[103] In FRR No. 50, however, we said that we were not abdicating our responsibilities in this area and that our existing authority regarding auditor independence was not affected. ISB standards and interpretations do not take precedence over our regulations or interpretations. As a result, if an ISB standard conflicts in any way with our rules or interpretations, the ISB standard or interpretation does not take effect unless or until we amend our existing regulation. *See* FRR 50, at 7 n.10.

[104] *See* ASR No. 150 (Dec. 20, 1973) (recognizing establishment of the FASB); ASR No. 280 (Sept. 2, 1980) (commenting on FASB's role in establishing and improving accounting principles).

[105] ISB Standard No. 2, ''Certain Independence Implications of Audits of Mutual Funds and Related Entities,'' at 2 ¶ 5 (Dec. 1999).

[106] *See generally* FRR No. 50, *supra* note 102 (regarding SEC's endorsement of ISB); ISB, ''Discussion Memorandum 00–1: A Conceptual Framework for Auditor Independence,'' at 1 (Feb. 2000) (regarding the purposes of a conceptual framework).

[107] Federal Trade Commission, *Rules and Regulations Under the Securities Act of 1933,* art. 14 (July 6, 1933).

issues encompassed within the auditor's engagement.[108] The general standard in paragraph (b) recognizes that an auditor must be independent in fact and appearance. Appearance is measured by reference to reasonable investors knowing all the relevant circumstances. As noted above,[109] independence in fact and the appearance of independence are inseparable.

To make the general standard more specific, paragraph (b) identifies four governing principles for determining when an auditor is not independent. The four principles incorporate situations that we believe reasonable investors would agree impair an auditor's independence. They are when the auditor:

- Has a mutual or conflicting interest with the audit client,[110]
- Audits the accountant's own work,[111]
- Functions as management or an employee of the audit client,[112] or
- Acts as an advocate for the audit client.[113]

We believe these four basic principles provide a framework for analyzing auditor independence issues, in that actions inconsistent with one or more of these principles would result in a lack of auditor independence. We apply these principles in the remainder of the rules.

We request comment on the general standard and the four proposed principles. Do these four principles appropriately address the concept of auditor independence? If not, why not? Please describe any alternative formulation and why it is preferable. Some believe a basic principle of auditor independence is that the auditor will not subordinate his or her judgment to others.[114] Should this be included in the proposed principles? Are there additional principles that should be included, and, if so, what are they, and do they reflect an impairment of independence?

Should the concept of mutual or conflicting interests be limited to economic interests? Would that limitation reach areas such as employment of close family members by an audit client? What forms of activities engaged in by accountants involve auditing their own work? What forms of activities constitute advocacy? Are there situations in which an auditor may act as an advocate for the audit client that would not impair the auditor's independence? If so, what are these, and why would they not impair independence? For instance, the principle regarding advocacy is not intended to prevent the accounting firm from explaining or defending (in court, if necessary) its work in an audit. Should that principle be modified to make that explicit? If so, how? Should accounting firms be permitted to lobby for an audit client before Congress, state legislatures, regulatory agencies, or other similar bodies?

C. Specific Applications of the Independence Standard

Proposed rule 2–01(c) ties the general standard and four principles of paragraph (b) to specific applications.[115] It provides that an accountant is not independent under the standard of paragraph (b) if, during the audit and professional engagement period, the accountant has any of the financial, employment or business relationships with, provides certain non-audit services to, or receives a contingent fee from, the accountant's audit client or an affiliate of the audit client, as specified in paragraphs (c)(1) through (c)(5), or otherwise does not comply with the standard of paragraph (b). Paragraphs (c)(1) through (c)(5) address separately situations in which an accountant is not independent of an audit client because of: (i) A financial relationship, (ii) an employment relationship, (iii) a business relationship, (iv) the provision of non-audit services, or (v) the receipt of contingent fees.[116]

While paragraph (c) specifies a number of the relationships and other situations that might impair an auditor's independence, this list is not exhaustive. We cannot foresee all situations in which an auditor might lack independence. Accordingly, paragraph (c) includes a catch-all reference to any other situation in which an accountant ''otherwise does not comply with the standard of paragraph (b) of this section.'' [117]

Auditor independence is more than a requirement imposed by the federal securities laws. Accountants have both a professional and ethical duty to remain independent of their audit clients,[118] including an obligation to ''avoid situations that may lead outsiders to doubt their independence.'' [119] Accordingly, accountants may have to take steps to remain independent even if the steps are not specified in proposed rule 2–01.

In certain situations, the best course may be for the accountant to ask to be removed from the audit engagement. Neither we nor the profession's standards-setters can foresee every business or employment relationship, or investment that could affect the hundreds of decisions that an auditor must make during the course of an audit. On occasion, there may be a relationship, apart from those contemplated by any standard or rule, that has an important meaning to an individual accountant and could create, or be viewed as creating, a conflict with the accountant's duty to investors.[120] We therefore encourage accountants to seek to recuse themselves from any review, audit, or attest engagement if reasonable investors would view the accountant's ability to exercise objective and impartial judgment as compromised by *any* personal, financial, or business relationship, whether or not specifically discussed in the Commission's, the ISB's, or the profession's rules.

Paragraphs (b) and (c) require the accountant to be independent ''during the audit and professional engagement period.'' [121] This term is defined in proposed rule 2–01(f)(6) to mean the period covered by any financial statements being audited or reviewed, and the period during which the auditor is engaged either to review or audit financial statements or to prepare a report filed with us, including at the

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[108] *Cf.* Staff Report, *supra* note 23, at 12–16. *See also* SEC, *Tenth Annual Report of the Securities and Exchange Commission,* at 205–207 (1944), which states:

[T]he Commission has found an accountant to be lacking in independence with respect to a particular registrant if the relationships which exist between the accountant and the client are such as to create a reasonable doubt as to whether the accountant will or can have an impartial and objective judgment on the questions confronting him.

[109] *See supra* Section II.B.

[110] *See, e.g.,* Codification §§ 601.01 & 601.04.

[111] *See, e.g.,* Codification § 602.02.c.i.

[112] *See, e.g.,* Rule 2–01(b), 17 CFR 210.2–01(b); Codification § 602.02.d.

[113] *See, e.g., Arthur Young, supra* note 19, at 819 n.15 (1984); Codification §§ 602.02.e.i and ii.

[114] *See* AICPA Code of Professional Conduct, ET § 102.01 (regarding integrity and objectivity).

[115] *See* illustrations in Appendix C, *supra* note 35.

[116] A number of the specified situations are based on examples in the current Codification and the AICPA and SESPS membership rules.

[117] We anticipate that the ISB and, when appropriate, our staff, will continue to implement and apply these principles to new and evolving transactions and events in the future.

[118] *See* AICPA SAS No. 1, AU § 220.03; AICPA Code of Professional Conduct, ET § 101. Of course, accountants also have to comply with applicable state law on independence. *Id.*

[119] AICPA SAS No. 1, AU § 220.03.

[120] *Cf. AUSA Life Ins. Co.* v. *Ernst & Young,* 206 F.3d 202 (2d Cir. 2000) (noting ''E&Y's failure lay in the seeming spinelessness'' of the audit engagement partner and that ''[p]art of the problem was undoubtedly the close personal relationship between'' that partner and the company's chief executive officer, a former co-partner in the firm) (quoting 991 F. Supp. 234, 248 (S.D.N.Y. 1997) (district court opinion)).

[121] AICPA Code of Professional Conduct, ET § 101.02 (as revised Feb. 28, 1998).

date of the audit report.[122] The use of the word ''during'' in paragraphs (b) and (c) is intended to make clear that an accountant will lack independence if, for example, he or she is independent at the outset of the engagement but acquires a financial interest in the audit client during the engagement.

1. Financial Relationships

Proposed rule 2–01(c)(1) sets forth the general rule regarding financial relationships that impair independence and is substantially similar to current Rule 2–01(b). Both state that a direct or material indirect financial interest in an audit client will impair an auditor's independence with respect to that audit client. The remainder of paragraph (c) of the proposed rule provides a non-exclusive list of relationships in which an accountant has a direct or material indirect financial interest in an audit client and is, therefore, not independent. Accountants should not assume that financial interests not specifically described in (c)(i) through (c)(iv) do not impair independence.

(a) *Investment in audit client.* Proposed rule 2–01(c)(1)(i) provides that an accountant is not independent with respect to an audit client if the accounting firm, any covered person in the firm, or any immediate family member of any covered person has any direct investment in the audit client or in an affiliate of the audit client. Under current rules, the ''direct financial interest'' requirement prevents all partners in an accounting firm, all managers in the office performing the audit, and all persons on the engagement team, from having any financial interest in the audit client. This approach was intended to give effect to the principle of loyalty that the firm and all of its employees owe to public investors. It is based on the belief that the public generally perceives a firm as one entity in which individuals may have equal access to confidential client information, shared confidences, and common personal and financial interests.

Under the proposal, as under the current rules, the accounting firm (including its affiliates, such as its pension plan) cannot have a direct investment in an audit client and remain independent of that audit client. The proposal otherwise increases significantly the group of persons within the firm who can invest in an audit client without impairing the auditor's independence. Under proposed paragraph (c)(1)(i), the group of persons who cannot invest is limited to ''covered persons in the firm'' and their immediate family members. As explained in greater detail below, we define ''covered persons'' in proposed rule 2–01(f)(13) to include the ''audit engagement team,'' those in the ''chain of command,'' all other partners, principals, shareholders, or professional employees providing any professional service to the audit client or its affiliate, and any other partner, principal, or shareholder in an ''office'' that participates in a significant portion of the audit.[123] The proposal, like the current rule, would attribute all investments by a covered person's ''immediate family members''—that is, the covered person's spouse, spousal equivalent, and dependents—to the covered person.[124]

Paragraph (c)(1)(i)(A) applies to any direct investment in an audit client ''such as stocks, bonds, notes, options, or other securities.'' As the language of the rule makes clear, this is not an exclusive list of all covered ownership interests. In addition, as under current law, the rule cannot be avoided through indirect means. For instance, an accountant who cannot have a direct investment in the audit client by virtue of being a covered person in the firm, may not hold the investment through a corporation or as a member of an investment club.[125]

Under paragraph (c)(1)(i)(A), a direct investment in an affiliate of an audit client would be treated the same as an investment in the audit client. ''Affiliate of the audit client'' is defined in proposed rule 2–01(f)(5) to mean an entity that has significant influence over the audit client, or over which the audit client has significant influence.[126] Our concern is that, in both cases, there is a melding of financial interests and managerial functions of the entity and the audit client such that one can influence the accounting policies and financial transactions of the other. Once an audit client can exercise ''significant influence'' over the operating or financial policies of an entity, then under GAAP,[127] information from the financial statements of that entity will be reflected in the financial statements of the audit client. Similarly, if an entity can exercise influence over the audit client, information from the audit client's financial statements will be reflected in the entity's financial statements. In this case, the revenues and income of the audit client would directly affect the earnings of the entity in which the accountant has an investment.

Proposed rule 2–01(c)(1)(i)(A) applies only to a limited class of people, namely an accounting firm, as well as covered persons in the firm and members of their immediate families. Proposed rule 2–01(c)(1)(i)(B) applies to a larger class of people, including an accounting firm's partners, principals, shareholders, professional employees, and their immediate family members, the close family members of covered persons in the firm,[128] and any ''group'' of the foregoing persons.[129] Under proposed rule 2–01(c)(1)(i)(B), an accountant is not independent with respect to an audit client when any such person or group holds more than five percent of an audit client's outstanding voting securities or otherwise controls the audit client. We selected the five percent level, in part, because it triggers a separate filing with the Commission,[130] and therefore, in certain circumstances, the accountant will have an independent means of knowing the status of those persons' investments.

Proposed rule 2–01(c)(1)(i)(C) is a specialized application of the direct financial interest rule. It provides that an accountant is not independent when

[122] Proposed rule 2–01(f)(6) states that the engagement period ends when the registrant or accountant notifies the Commission that the registrant is no longer the accountant's audit client. This notice typically would occur when the registrant files with the Commission a Form 8–K with disclosures under Item 4 ''Changes in Registrant's Certifying Accountant.'' In some cases, however, a Form 8–K would not be required, such as when the registrant is a foreign private issuer or when the audited financial statements of a non-reporting company are filed upon its acquisition by a public company. Notification to the Commission in these cases would occur by the filing of the next audited financial statements of the foreign private issuer or the successor corporation. Registrants or auditors in these situations, however, may provide earlier notice to the Commission on Form 6–K or other appropriate means.

[123] *See infra* Section III.I.10, for a complete discussion of the term ''covered persons in the firm.''

[124] *See infra* Section III.I.11. for a complete discussion of the term ''immediate family members.''

[125] *Compare* Codification § 602.02.b.ii (Example 1); *cf. infra* Section III.C.1.(a). (regarding indirect investments).

[126] We recognize that this definition of affiliate is different from the current definition in Rule 1–02. We believe, however, that the revised definition is appropriate in the context of our proposals in this release.

[127] Accounting Principles Board (''APB'') Opinion No. 18, ''The Equity Method of Accounting for Investments in Common Stock,'' at ¶ 17 (1971).

[128] *See infra* Section III.I.9. for a complete discussion of the term ''close family members''.

[129] ''Group'' is defined in proposed rule 2–01(f)(14) to mean when two or more persons act together for the purposes of acquiring, holding, voting, or disposing of securities of a registrant. This definition is based on Exchange Act Rule 13d–5(b)(1).

[130] Schedules 13D and 13G, 17 CFR 240.13d–1. Schedules 13D and 13G are intended to alert the market to accumulations of a public company's securities that might indicate a potential change of control of the company.

the accounting firm, any covered person in the firm, or any covered person's immediate family member serves as voting trustee of a trust or executor of an estate containing the securities of an audit client. In these positions, the firm or person typically makes investment decisions, or participates in making investment decisions, concerning the securities of the audit client. In this role, the firm or person typically has a fiduciary duty to preserve or maximize the value of the assets. We believe that this warrants treating the trustee or executor's interest as a direct financial interest in the audit client and deeming the auditor's independence impaired.

Proposed rule 2–01(c)(1)(i)(D) covers material indirect investments in an audit client. It describes the circumstances in which independence is impaired because of investments by the accounting firm, any covered person in the firm, any immediate family member of a covered person, or any group of these people in: (i) Non-client entities that have an investment in an audit client (''non-client investors''), or (ii) companies in which an audit client also has invested (''common investees''). The current rule generally recognizes that these investments create a mutuality of interest if the auditor or the audit client owns more than five percent of the entity's equity securities.[131]

In both the ''non-client investor'' and ''common investee'' scenarios, an intermediary is placed between the auditor and the audit client. In one case, the auditor has invested in an entity that, in turn, has invested in the audit client. In the other, the auditor and the audit client are linked through a mutual financial interest in seeing their common investment grow and prosper. Because these financial ties are indirect, we believe that use of a materiality threshold continues to be appropriate. Accordingly, under the proposed rule, accounting firms, covered persons, and covered persons' immediate families can own up to five percent of an entity that invests in an audit client or of an investee in which an audit client also invests.[132]

It should be remembered, however, that should the ''non-client investor'' or the ''common investee'' become an affiliate of the audit client, then as described under paragraph (A) regarding direct investments, the auditor may not have *any* investment in the intermediary entity. For example, assume auditor A invests in non-client company B, which owns an equity interest in audit client C. A may own up to five percent of the equity of B without impairing its independence from C, provided B does not ''significantly influence'' or is not ''significantly influenced'' by C. As discussed above, if such significant influence exists, then B is an affiliate of C and, under paragraph (A) regarding direct investments, A may not invest in B without impairing its independence from C. Similarly, assume auditor A invests in non-client company Z, and audit client C also invests in company Z. A may own up to five percent of the equity of company Z without impairing its independence from C, provided Z does not ''significantly influence'' or is not ''significantly influenced'' by C.

Proposed rule 2–01(c)(1)(i)(D) does not make a distinction for an indirect investment in an audit client by an auditor through an investment company. As a result, an auditor would not be independent if the auditor owns more than 5% of the outstanding stock of an investment company and the investment company holds an investment in an audit client.[133] The proposed rule, however, does not impose a limit on the portion of an investee company's (including an investment company's) assets that may be invested in the audit client, assuming the auditor owns less than five percent of the investee company and the investee is not an affiliate of the audit client. For example, an operating company or an investment company (Company A) could have a significant portion of its assets invested in Company B, and an auditor could own up to five percent of Company A's stock and audit Company B, so long as B is not an affiliate of A.

We considered limiting the portion of an investee company's assets that could be invested in an audit client without impairing auditor independence. We request comment on whether there should be a limit on the portion of an investee's total assets that can be invested in an audit client without independence being impaired in addition to, or in place of, the proposed indirect investment test. If so, where should the limit be set? Would a 10% or 25% level be appropriate?

If we use that approach, should the rule for registered investment companies turn on their diversification status?[134] Limitations on material indirect investments in an audit client may be difficult for auditors to apply in practice when they invest in an investment company. Auditors have no easy way to determine how much of an investment company's assets are invested in an audit client or how much of an issuer's securities are owned by an investment company because many investment companies' portfolios change frequently. Because funds are required to disclose their diversification status in their registration statements, accountants could easily determine, by looking at a fund's registration statement, whether an investment in the fund by the accounting firm, a covered person in the firm or such person's immediate family might impair an accountant's independence under the rule. Should we permit an investment in any registered investment company that is ''diversified'' under the ICA, provided it is not part of the same investment company complex as an audit client?[135] Would this be one way to prevent inadvertent violations of the independence rules?

We solicit comment on all aspects of the financial interest rules in paragraph (c)(1)(i). In particular, would reasonable investors be concerned that investments of the sort described in this section would impair an auditor's independence? Should the restrictions on financial ownership interests apply to all partners (but not their immediate family or employees of the firm) of an audit firm, as the partners represent the partnership?

Is the five percent threshold for financial interest in an audit client by persons who do not influence the audit appropriate? For example, would reasonable investors perceive a firm's independence to be impaired if a partner or employee in an office that did not work on the audit, held four percent of the audit client? If the five percent threshold is not appropriate, what threshold is appropriate, and which individuals should be subject to the restriction?

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[131] Codification § 602.02.b.iii. We have used the term ''material'' in our proposed rules in the sense that it has been used in our current independence rules. *See, e.g.,* ASR No. 79 (Apr. 8, 1958). This should not be confused with the meaning of the term ''material'' in other federal securities law contexts. *See* Staff Accounting Bulletin No. 99 (Aug. 13, 1999).

[132] Paragraph (c)(1)(i)(D)(*1*) and (*2*) refer to ''ownership'' of an entity. Ownership interest is determined based on the form of organization. For example, for a corporation, ownership is based on ownership of a class of voting securities. For a partnership, ownership is based on ownership of a partnership interest or unit.

[133] Also, an auditor would not be able to invest in an investment company if the investment company is an affiliate of the audit client. *See* proposed rule 2–01(c)(1)(i)(A).

[134] Generally, a diversified management investment company is a company that with respect to 75% of its total assets may not invest more than 5% of its total assets in a single issuer and may not own more than 10% of the outstanding securities of a single issuer. *See* Section 5(b)(1) of the ICA, 15 U.S.C. 80a–5(b).

[135] *See infra* Section III.I.12. for a discussion of the ''investment company complex'' definition.

Furthermore, is it appropriate to base the determination, as we do, on ownership of five percent or more of a company's equity securities? Should we be more specific and indicate whether to account for common and preferred shares, and voting and non-voting shares? If so, what types of shares should be included (*i.e.,* voting shares only)? If the determination depends on ownership of outstanding voting shares, should all shares, regardless of the number of votes different classes of shares have, count the same?

Would reasonable investors perceive an accountant's independence to be impaired if any partner, shareholder, or professional employee of the accountant's firm has an investment in an audit client that is more than five percent of the individual's net worth, even if it represents less than five percent of the ownership of the audit client's equity securities?

Suppose that ABC Accounting Firm audits XYZ Corp. Partner A is a covered person in the firm for the XYZ audit. In the following situations, would a reasonable investor be concerned about the independence of the auditor:

(i) A grandchild of Partner A owns more than five percent of the equity of XYZ Corp;

(ii) Partner A's siblings each own four percent of the equity of XYZ Corp. The siblings do not act together in their investment activities in such a way as to constitute a group under the proposed definition of group;

(iii) Partner A's brother-in-law owns ten percent of the equity of XYZ Corp;

(iv) Partner A's sister-in-law owns 20 percent of the equity of XYZ Corp; or

(v) Five partners of ABC Accounting Firm, none of whom are covered persons and not acting as a ''group,'' each own four percent of the equity of XYZ Corp.

Are there other persons whose investment in the XYZ Corp. may cause concern regarding the independence of Partner A?

We solicit comment on all aspects of the proposals regarding investments in audit clients in paragraph (c)(1)(i)(D). Do investments in an intermediary affect the auditor's independence when the intermediary has an investment in an audit client that an auditor could not have directly without impairing the auditor's independence? If the auditor has an investment greater than five percent in the intermediary, but the intermediary has an investment in the audit client that is less than five percent of the audit client, is the auditor's independence impaired? What if the intermediary's investment is less than five percent of the audit client but material to the auditor or intermediary?

Suppose that the pension fund of ABC Accounting Firm has a 4.9 percent ownership of DEF Corp. DEF is not an audit client of ABC. DEF in turn has a substantial investment in XYZ Corp., an audit client of ABC. DEF and XYZ are not affiliates. Would a reasonable investor perceive that the accountant's independence was impaired? Is five percent an appropriate threshold? Would a lower threshold enhance investor confidence in auditor independence? The proposed rule on material indirect investments includes investments by the accounting firm, any covered person in the firm or any of his or her immediate family members, or any group of such persons. Should other persons be included?

Suppose that the pension fund of ABC Accounting Firm has a 4.9 percent ownership of DEF Corp. DEF is not an audit client of ABC. XYZ Corp., an audit client of ABC, has a substantial investment in DEF, but XYZ and DEF are not affiliates. Would reasonable investors perceive that the accountant's independence was impaired? The proposed rule includes investments by the accounting firm, any covered person in the firm or any of his or her immediate family members, or any group of such persons. Should other persons be included? Are there any investments that you believe would impair an auditor's independence that the proposed rules permit? If so, what are they, and why do they raise independence concerns?

(b) *Other financial interests.* Proposed rule 2–01(c)(1)(ii) describes other financial interests of an auditor that would impair an auditor's independence with respect to an audit client because they create a debtor-creditor relationship or other commingling of the financial interests of the auditor and the audit client. In some situations (*e.g.,* bank deposits or insurance), the continued viability of the audit client may be necessary for protection of the auditor's own assets or for the auditor to receive a benefit (*e.g.,* insurance claim). These situations reasonably may be viewed as creating a self-interest that competes with the auditor's obligation to serve only investors' interests. We discuss several of these situations here.

(i) *Loans/debtor-creditor relationships.* The proposals provide that the accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any of the covered person's immediate family members has any loan (including any margin loan) to or from an audit client, the officers of an audit client or an affiliate of an audit client, the directors of an audit client or an affiliate of an audit client, or record or beneficial owners of more than five percent of the equity securities of an audit client or its affiliate. We considered adding to the proposal the AICPA's Ethics Ruling on loans to or from audit clients.[136] The ruling indicates that any loan would impair the auditor's independence, unless the loan was from a financial institution; acquired in accordance with that institution's normal lending procedures, terms and requirements; kept current as to all its terms; and, was: (1) An automobile loan or lease collateralized by the automobile; (2) a loan on the cash surrender value of an insurance policy; (3) a ''passbook loan'' collateralized by cash deposits at the same institution; or (4) credit cards or cash advances on checking accounts with an aggregate balance not paid of less than $5,000. We are proposing a more liberal approach since our proposal sets the credit card balance threshold at $10,000, permits a mortgage loan not obtained during the period of the audit or professional engagement, and because, unlike the AICPA ruling, the proposed rule covers only the relatively small group of entities and people that could influence the audit.

We solicit comment on our approach to loans. Should we expand the rule to cover close family members as opposed to just immediate family members? For example, would a $1,000,000 home loan from an audit client to the auditor's brother-in-law be perceived as affecting the independence of the audit partner? Does the answer change if the loan is unsecured? Are there other categories of loans that should be excluded, similar to car loans? Are there circumstances under which a loan to or from an audit client would not impair an auditor's independence?

(ii) *Savings and checking accounts.* The proposals provide that an accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any of the covered person's immediate family members has any savings or checking account at a bank or savings and loan that is an audit client or its affiliate, if the account has a balance that exceeds the amount insured by the Federal Deposit Insurance Corporation (''FDIC''). Would reasonable investors perceive an accountant's independence to be

[136] *See* AICPA Code of Professional Conduct, ET §§ 101.02, 101.07 (Ethics Rulings 101–1–A–4, 101–5).

impaired if an accountant or the accountant's immediate family member has any savings or checking account at an audit client or the audit client's affiliate? Would an accountant's independence be impaired if a covered person maintained a balance in a non-federally insured bank that is an audit client? Are there other institutions that are similar to a bank or savings and loan that should be included? Are any of the risks to independence mitigated by depository insurance similar to that provided by the FDIC? Why or why not? Would the financial condition of the bank or other depository institution affect reasonable investors' perceptions?

(iii) *Broker-dealer accounts.* The proposals provide that an accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any of the covered person's immediate family members has any brokerage or similar account maintained with a broker-dealer that is an audit client or an affiliate of an audit client if any such accounts include any asset other than cash or securities (within the meaning of ''security'' provided in the Securities Investor Protection Act (''SIPA'')), or where the value of the assets in the accounts exceeds the amount that is subject to a Securities Investor Protection Corporation (''SIPC'') advance for those accounts, under Section 9 of SIPA. Our proposal is rooted in a concern that, to the extent that the assets of an accountant (or covered persons or their family members) in a broker-dealer account are exposed to loss in the event of the broker-dealer's financial failure, the accountant has an interest in the financial condition of the broker-dealer.

When an accounting firm, a covered person, or a covered person's immediate family member maintains such accounts at an audit client, would reasonable investors perceive that auditor independence is impaired? Should covered persons be considered not independent if they have an account with a broker-dealer that is an audit client, regardless of whether the assets in the account are subject to a SIPC advance? Are there better ways to identify broker-dealer accounts that impair an auditor's independence? For example, the proposal's provision on loans and debtor-creditor relationships provides that a margin loan impairs an auditor's independence. Should the provision concerning broker-dealer accounts state that maintaining a margin account with a broker-dealer impairs an auditor's independence as to that broker-dealer, whether or not any margin debt exists? Are there other types of accounts that might be maintained with a broker-dealer that the rule should specifically identify as impairments to independence? If so, what types of accounts, and why do they impair, or appear to impair, independence?

Should the rule specifically address short positions, or the writing of options, in an account with a broker-dealer? If so, should the rule provide that those types of accounts, when held by the accounting firm, any covered person in the firm, or such person's immediate family member, impair independence as to the broker-dealer with whom the account is maintained?

Is it impractical for accountants (and covered persons and family members) to monitor whether the assets in their broker-dealer accounts are within the amounts subject to a SIPC advance? Are there preferable alternative formulations that would accomplish the goal of deeming independence to be impaired only in those situations where the accounts include assets that are exposed to loss in the event the broker-dealer fails? Or is that goal too narrow? Should the rule impose additional limits on accounts even though the assets in the accounts stay within the amounts subject to a SIPC advance? For example, an auditor might control several different types of accounts, each of which qualify for SIPC coverage. Should the rule impose some limit on the number or total assets of such accounts with a broker-dealer audit client? What should those limits be, and why?

Would it be preferable to provide that independence is impaired as to any broker-dealer audit client with whom the accountant (or covered person or covered person's family member) maintains any account, regardless of whether the account's assets are within the limits subject to a SIPC advance?

In addition to SIPC protection, broker-dealers sometimes purchase insurance from private insurers to protect customer assets. Should the rule take that type of insurance into account? If so, how?

(iv) *Futures commission merchant accounts.* The proposals provide that the accountant will not be independent when the accounting firm, or any covered person in the accounting firm, or any covered person's immediate family member has any futures, commodity, or similar account maintained with a futures commission merchant (''FCM'') that is an audit client or an affiliate of the audit client. This proposal is rooted in a concern that, to the extent that the assets of an accountant (or covered persons or their family members) in an FCM account are exposed to loss in the event of the FCM's financial failure, the accountant has an interest in the financial condition of the FCM. We solicit comment on whether maintaining such accounts could impair, or would appear to reasonable investors to impair, an auditor's independence. Are there different types of FCM accounts or different types of assets maintained in FCM accounts that should be distinguished from each other for purposes of determining auditor independence? What distinctions should be made? Are there conditions under which an accountant (or covered person or covered person's family member) could maintain an account with an FCM but have no interest in the financial condition of the FCM? If so, what are those conditions? How, if at all, should the rule take those conditions into account?

(v) *Credit cards.* We are proposing that credit card balances of $10,000 or less owed by a firm, a covered person, or any covered person's immediate family member to an audit client or its affiliate, not be deemed to impair an auditor's independence.[137] We do not believe that a relatively minor credit card balance would create or appear to create a mutuality or conflict of interest with the lender-audit client. Furthermore, a strict prohibition of such accounts might unnecessarily affect a firm's ability to assign staff to provide short-term technical advice to the audit engagement team. Would reasonable investors perceive an accountant's independence to be impaired if a covered person held a credit card balance in excess of $10,000 with a lender that is an audit client? Is $10,000 an appropriate limit?

(vi) *Insurance products.* Proposed rule 2–01(c)(1)(ii)(F) provides that an auditor's independence is impaired whenever the accounting firm, any covered person in the firm, or any immediate family member of a covered person holds any individual insurance policy originally issued by an insurer that is an audit client or an affiliate of an audit client. Additionally, under the proposed rule, an auditor's independence is impaired if the audit firm obtains professional liability coverage from an audit client or its affiliate. Holding these policies creates a mutual interest in the continuing viability of the insurer.

We solicit comment on whether an accountant's independence is impaired, and on whether reasonable investors would perceive an accountant's independence to be impaired, if the

[137] *See* proposed rule 2–01(c)(1)(ii)(E).

accountant or a member of the accountant's immediate family originated an individual insurance policy with an insurance company that is an audit client or an affiliate of an audit client. Should the proposed rule cover all insurance policies, or be limited, such as to life insurance policies? Would an accounting firm's independence be impaired if the accounting firm acquired from an audit client insurance such as (i) insurance for litigation or indemnification losses, (ii) group health, or (iii) group life insurance policies? Should an accounting firm be permitted to purchase professional liability coverage through an audit client?

(vii) *Investment companies*. Proposed rule 2–01(c)(1)(ii)(G) sets forth the rule for investment by accounting firms, covered persons and covered persons' immediate family members in an investment company or a related entity. The proposed rule provides that an auditor is not independent if the auditor invests in any entity in an investment company complex if the audit client is also an entity included in that investment company complex. Proposed rule 2–01(f)(16) defines ''investment company complex'' as an investment company and its investment adviser or, if the company is a unit investment trust, its sponsor; any entity controlled by, under common control with, or controlling the investment adviser or sponsor, such as the distributor, administrator or transfer agent; and any investment company or an entity that would be an investment company but for the exclusions provided by section 3(c) of the ICA [138] that is advised by the same adviser or a related adviser, or sponsored by the same sponsor or related sponsor.

Proposed rule 2–01(c)(1)(ii)(G) makes clear that when an audit client is part of an investment company complex, the accountant must be independent of each entity in the complex. The proposed rule follows ISB Standard No. 2 on this point. Under ISB Standard No. 2, the firm and those in the firm who are in a position to influence an audit must be independent from each fund in the fund complex *and* each entity in the fund complex in order to be independent with respect to *any* fund or entity in the complex.[139]

In addition to the requirement that the auditor have no investment in any entity in the investment company complex, the auditor also must be independent with respect to its other relationships with entities within the complex. For example, an auditor could not be a director for an entity within an investment company complex while auditing an entity in the complex.

Should we follow the standard of ISB Standard No. 2 that an accountant must be independent of the entire investment company complex to be independent of any entity in that complex? Is this standard sufficiently clear and capable of implementation? If not, what modifications are needed? Does this standard have implications outside the area of investments (*e.g.*, employment relationships, business relationships, or the provision of non-audit services) that go beyond what is necessary to safeguard independence?

Are there certain complex capital structures, such as master/feeder or fund of funds, that require specific clarification as to an auditor's independence when the auditor audits one or more entities in that structure? Are there any unique implications of applying the proposed independence rules to investment companies, investment advisers, sponsors of unit investment trusts, and affiliated or unaffiliated service providers? If so, what are they and how should they be addressed?

(c) *Exceptions*. Proposed rule 2–01(c)(1)(iii) would provide two limited exceptions to the financial relationship rules. These exceptions recognize that there are situations in which an accountant, by virtue of being given a gift of or inheriting a financial interest from a third party, or because the accounting firm has taken on a new audit client, may lack independence solely because of events beyond the accountant's control. In these circumstances, and provided the financial interest is promptly disposed of or the financial relationship is promptly terminated, we believe that reasonable investors would not necessarily perceive the accountant to be incapable of exercising objective and impartial judgment.

(i) *Inheritance and gift*. Proposed rule 2–01(c)(1)(iii)(A) provides that an accountant's independence will not be impaired if any person acquires a financial interest through an unsolicited gift or inheritance that would cause the accountant to be not independent under (c)(1)(i) or (c)(1)(ii), and the financial interest is disposed of as soon as practicable, but no longer than 30 days after the person has the right to dispose of such interest. We solicit comment on all aspects of the gift and inheritance exception. Does the exception capture all situations in which a person subject to the financial relationship rules might enter into a restricted financial relationship and yet not give rise to any independence concerns? Are there situations in which an accounting firm might have no option but to receive its fee in its audit client's stock as a result of a court settlement? If so, should there be an exception for these situations, and how would such an exception work? Does the rule provide affected persons with adequate means to ''cure'' the lack of independence? For example, should the rule expressly allow a covered person to recuse himself or herself from an engagement or the chain of command rather than disposing of the financial interest?

Would an accountant's independence be impaired if the covered person was restricted from disposing of the financial interest for an extended period? For example, suppose XYZ Corp. is the audit client of ABC Accounting Firm. Partner A is a covered person in the firm. Partner A becomes the beneficiary of a testamentary trust fund that includes $2 million in equity securities of XYZ Corp. This amount constitutes 40 percent of the amount of the trust, and 30 percent of Partner A's net worth. The terms of the trust fund prohibit disposing of the XYZ investment for a period of five years. Would a reasonable investor perceive ABC's independence to be impaired?

Assume the same facts as above, except that the securities are received directly by Partner A. Would placing those securities in a ''blind trust'' remedy the independence question? Can an individual be impartial if he or she knows what securities are held in the blind trust?

(ii) *New audit engagement*. Proposed rule 2–01(c)(1)(iii)(B) is designed to allow accounting firms to bid for and accept new audit engagements, even if a person has a financial interest that would cause the accountant to be not independent under the financial relationship rules. This exception is available to an accountant so long as the accountant did not audit the client's financial statements for the immediately preceding fiscal year, and the accountant was independent before the earlier of either accepting the engagement to provide audit, review, or attest services to the audit client; or commencing any audit, review, or attest procedures (including planning the audit of the client's financial statements).

[138] Section 3(c) of the ICA excludes from the ICA certain companies that otherwise would be investment companies. 15 U.S.C. 80a–3(c). These companies include, among others, hedge funds and real estate pools.

[139] ISB Standard No. 2, ''Certain Independence Implications of Audits of Mutual Funds and Related Entities,'' at ¶ 3 (Dec. 1999).

The new audit engagement exception of proposed rule 2–01(c)(1)(iii)(B) is necessary because an auditor must be independent, not only during the period of the auditor's engagement, but also during the period covered by any financial statements being audited or reviewed.[140] Because of an existing financial relationship between an accounting firm or one of its employees and a company (that is not an audit client), an accounting firm may not be able to bid for or accept an audit engagement from the company without this exception. For example, where a firm's pension plan or a covered person in the firm owns the stock of a potential audit client during the period of the financial statements to be audited or reviewed, the accounting firm could not compete for the audit engagement but for this exception. This exception allows firms to bid for and accept engagements in these circumstances, provided they are otherwise independent of the audit client and they become independent of the audit client under the financial relationship rules before accepting the engagement or beginning any audit, review, or attest procedures.

We solicit comment on all aspects of the new audit engagement exception. Will the exception, as a practical matter, allow accounting firms to bid for and accept new audit engagements when they become available? Is the exception appropriate even though the auditor's independence would otherwise be considered impaired? Should the exception also extend to employment relationships, business relationships, or the provision of non-audit services? Does the existence of an employment relationship or the provision of non-audit services during the period covered by the financial statements raise independence concerns that cannot be ''cured'' before beginning the engagement in the same way that a financial relationship during this period can?

(d) *Audit Clients' Financial Relationships.* Proposed rule 2–01(c)(1)(iv) provides that an accountant is not independent when its audit client has invested, or otherwise has a financial interest in the accounting firm or an affiliate of the accounting firm.

(i) *Investments by the audit client in the auditor.* Under proposed rule 2–01(c)(1)(iv)(A), an accountant's independence is impaired with respect to an audit client when the audit client or an affiliate of an audit client has, or has agreed to acquire, any direct investment in the accounting firm or its affiliate, whether in the form of stocks, bonds, notes, options, or other securities. This impairment occurs primarily for two reasons.

First, the accountant may be placed in the position of auditing the value of the securities of the accounting firm or its affiliates that are reflected as an asset in the financial statements of the audit client. This could result when an auditor in an accounting firm whose shares are held by the audit client must value the shares of that accounting firm held by the audit client for purposes of including that valuation in the audited financial statements.

Second, the accountant reasonably may be assumed to have a mutuality of financial interest with the owners of the firm and of the firm's affiliates, including an audit client-shareholder. The audit firm, as management, will be responsible to its shareholders, and one of the shareholders may be an audit client. Thus, there may be situations where a shareholder-audit client is in a position to influence the accountant because the accountant would owe a fiduciary responsibility to that audit client-shareholder and would be accountable to that audit client for the accounting firm's activities.[141] For example, an audit client-shareholder is legally entitled to receive certain notices, invoke ''dissenters' rights,''and nominate candidates for directors under most state corporation laws. Consequently, an accountant, as management, would have fiduciary obligations to an audit client-shareholder who, acting alone or in combination with other shareholders, may be in a position to exercise some measure of influence over the accountant.

Are there other situations in which an audit client could have a financial interest in the accounting firm that would impair independence? For example, would a reasonable investor perceive an accountant's independence to be impaired if the audit client's CEO held a substantial investment in the accounting firm? Would it make a difference if the investment was significant to the CEO's net worth? Should there be a maximum allowable investment by audit clients in their auditors? If so, what should the threshold be? Does it matter if the investment is material to the investor or one of its affiliates?

(ii) *Underwriting.* Few transactions are as significant to the financial health of a company, including an accounting firm, as the sale of its securities, whether in private or public offerings. In an offering, an underwriter either buys and then resells a company's securities or receives a commission for selling the services. In either circumstance, were an audit client to act as underwriter of an accounting firm's or its affiliate's securities, the audit client would assume the role of advocate or seller of the accounting firm's securities. Moreover, depending on the terms of the underwriting, the underwriter could for a time become a significant shareholder of the accounting firm. There also may be indemnification agreements that place the underwriter and auditor in adversarial positions.

Relying on an audit client to sell the accounting firm's securities plainly impairs independence. The accounting firm would have a direct interest in ensuring the underwriter's viability and credibility, either of which could be damaged as the result of an audit. Moreover, the auditor would have a clear incentive not to displease an audit client to which it had entrusted a critical financial transaction. Similar conflicts of interest may arise if an audit client or an affiliate of an audit client performs other financial services for an accounting firm or its affiliates, such as making a market in the accounting firm's or its affiliate's securities or issuing an analyst report concerning the securities of the accounting firm or its affiliate.

We request comment on whether we have addressed all situations in which the independence concerns arise because the audit client or its affiliate performs a financial service for the accounting firm or an affiliate? Are there financial services that an audit client or its affiliate could provide to its auditors or the accounting firm or its affiliate that would not raise these concerns? For example, would reasonable investors perceive an accountant's independence to be impaired if an audit client or an affiliate of an audit client made a market in the securities of the accounting firm or prepared and issued research reports on the accounting firm?

2. Employment Relationships

Proposed rule 2–01(c)(2) sets forth the employment relationships that impair an auditor's independence. This paragraph is based on the premise that when an accountant is either employed by an audit client, or has a close relative

[140] *See supra* Section III.C.

[141] *See* Letter from POB to ISB, dated Jan. 12, 2000 (''[p]ublic ownership in an audit firm or in its parent or in an entity that effectively has control of the audit firm would add another form of allegiance and accountability to those identified by the Supreme Court—a form of allegiance that in our opinion will be viewed as detracting from, if not conflicting with, the auditor's 'public responsibility' '').

or former colleague employed in certain positions at an audit client, the accountant might not be capable of exercising the objective and impartial judgment that is the hallmark of independence.

As with the financial relationships provision, paragraph (c)(2) sets forth the general standard that an accountant is not independent if the accountant has an employment relationship with an audit client or an affiliate of an audit client. The proposed rule then provides a non-exclusive list of relationships that are inconsistent with the general rule of paragraph (c)(2). Again, accountants should not assume that all employment relationships not specifically described in (c)(2)(i) through (c)(2)(iv) do not impair independence. All non-specified employment relationships are subject to the general tests of paragraphs (b) and (c)(2).

(a) *Employment at audit client of accountant.* Proposed rule 2–01(c)(2)(i) continues the principle set forth in current Rule 2–01(b) that to be independent, neither the accountant nor any member of his or her firm can be a director, officer, or employee of an audit client. The paragraph therefore provides that an accountant is not independent if any current partner, principal, shareholder, or professional employee of the accounting firm is employed by the audit client or an affiliate of an audit client, or serves as a member of the board of directors or similar management or governing body of the audit client or an affiliate of the audit client. In the most basic sense, the accountant cannot be employed by his or her audit client and be independent.

(b) *Employment at audit client of certain relatives of accountant.* Proposed rule 2–01(c)(2)(ii) specifies the family members of the auditor whose employment in certain positions by an audit client or its affiliate will impair the auditor's independence. For the employment category, the interests and relationships of a covered person's close family members—that is, the covered person's spouse, spousal equivalent, dependents, parents, nondependent children, and siblings—are attributed to the covered person in the firm. This stands in contrast to the investment category, where only the interests of the covered person's immediate family members (*i.e.,* spouse, spousal equivalent, and dependents) are attributed to the covered person. We believe this distinction is justified because, while some close family members' investments may not be known to a covered person, the place and nature of such family members' employment should be obvious, and thus may affect the covered person's objectivity and impartiality.

We do not consider an audit client's employment of even a close family member, however, to impair an auditor's independence unless that family member is in a position to, or does, influence the preparers or the contents of the accounting records or financial statements of the audit client or its affiliate. The proposed rule uses the defined term ''accounting or financial reporting oversight role'' to describe the persons in this group. The term is defined in proposed rule 2–01(f)(3). To reduce uncertainty, the definition lists those positions that generally carry with them the type of influence about which we are concerned. These positions include: a member of the audit client's board of directors (or similar management or governing body), chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, vice president of marketing, or any equivalent position.

The proposed rule eliminates the so-called ''five hundred mile rule.'' Under that rule, when a family member has an interest in or relationship with an audit client, consideration is given to whether the geographic separation of that family member from both the person in the firm and the conduct of the audit lessens the negative impact of that interest or relationship on the auditor's independence.[142] When an auditor's relative is not geographically distanced from the auditor and the audit, the auditor and his or her relatives are said to be in ''closely linked business communities'' and the auditor's independence is deemed to be impaired. However, considering whether family members are in ''closely linked business communities'' no longer seems relevant in today's world of instantaneous international communications and global securities markets. Accordingly, the proposal dispenses with this test of auditor independence.

We solicit comment on all aspects of proposed rule 2–01(c)(2)(ii). Does the proposal use an appropriate definition of what constitutes close family members whose employment by an audit client results in an impairment of an auditor's independence? If not, how should it be revised? Should the definition of close family member be expanded to include extended family relationships, such as in-laws? Would reasonable investors perceive an accountant's independence to be impaired if the audit client's CEO was the brother-in-law of a covered person? Would employment by an audit client of friends, neighbors, or other persons having emotional or financial ties with covered persons, but not within the definition of close family member, impair an accountant's independence?

Would reasonable investors perceive an accountant's independence to be impaired if a close family member of a covered person were employed by an audit client in a capacity that did not enable the family member to influence the preparers or contents of the accounting records or financial statements of the audit client or its affiliates? The ISB has suggested that independence is impaired if an immediate family member of a person on the audit engagement team is employed by the audit client in any position, or if a close family member holds a ''key position'' at an audit client.[143] Is the ISB's stricter position with respect to immediate family members necessary to ensure an auditor's independence?

Is the definition of the positions that may enable employees to influence the accounting records appropriate? Would independence be impaired by other employment positions held by close family members with an audit client, such as vice president of human resources, assistant controller, or manager of internal audit?

(c) *Employment at audit client of former employee of accounting firm.* Proposed rule 2–01(c)(2)(iii) describes the circumstances under which an auditor's independence will be impaired by an audit client's employment of a former partner, shareholder, principal, or professional employee of the accounting firm. When these persons retire or resign from accounting firms, it is not unusual for them to join the management of former audit clients or to become members of their boards of directors. Registrants and their shareholders may benefit from the former partner's accounting and financial reporting expertise. Investors and the public in general also may benefit when individuals on the board or in management can work effectively with the auditors, members of the audit committee, and management to provide informative financial statements and reports.

When these persons, however, assume positions with the firm's audit client and also remain linked in some fashion to the accounting firm, they could be in a position to influence the content of the

[142] *See generally* Codification § 602.02.h.

[143] ISB, Invitation to Comment 99–1, *supra* note 37, at 9.

audit client's accounting records and financial statements on the one hand, or the conduct of the audit, on the other. This is particularly true when the individual, while at the accounting firm, was in some way associated with the audit of the client. The perceived close association between a member of the board of directors or of senior management [144] may create the impression of a mutuality of interest.[145]

As accounting firm partners leave their firms and accept management positions with former audit clients, some have questioned whether these individuals compromised their independence in order to secure positions with audit clients.[146] Others have questioned the continuing personal relationships between the former partner and the individuals at the firm who audit the client's financial statements.[147] There is also the risk that the former partner's familiarity with the firm's audit process and the audit partners and employees of the firm will enable him or her to alter the outcome of the audit.[148]

As with the current requirements, the proposed rule recognizes that an auditor's independence with respect to an audit client may be impaired when former partners, shareholders, principals, or professional employees of the firm are employed in an accounting or financial reporting oversight role at the firm's audit client or an affiliate of the audit client. We are also proposing, however, that independence will not be impaired if certain steps are taken to disassociate the individual from the firm. Under the proposed rules, the former partner, shareholder, principal, or professional employee must not: (i) Influence the firm's operations or financial policies, (ii) have a capital balance in the firm, or (iii) have a financial arrangement with the firm, other than a fully-funded, fixed payment retirement account.

The rule provides that, under certain conditions, use of a ''rabbi trust'' as a mechanism to make fixed retirement payments to a former partner or employee of the accounting firm would not impair an auditor's independence.[149] Specifically, under the proposed rule, use of a ''rabbi trust'' does not impair an auditor's independence as long as the amount owed to the individual is immaterial to the firm, the payments from the trust are fixed as to time and amount, and the chances of the firm entering bankruptcy or insolvency are remote.

We request comment on our approach in (c)(2)(iii). Should a former partner now employed by the audit client, be permitted to retain financial ties to the audit firm without impairing the independence of the auditor? What if the financial ties are material to the former auditor but not to the firm? Would reasonable investors perceive an accountant's independence to be impaired if a former employee of the accounting firm, who continued to hold a 401(k) investment with the accounting firm, became employed by the audit client? Does it matter if the former partner's position at the audit client is not one in which he or she will have influence over the company's audit, accounting records, or financial statements?

If an audit partner or other professional employee leaves an accounting firm and joins the audit client during the course of an audit, does this impair the accounting firm's independence? Should the rule depend on whether the person leaving the accounting firm is a senior partner within the firm, an audit manager with management responsibilities for the audit, or non-managerial audit staff?

Should we require a mandatory ''cooling off'' period for former partners and professional staff of an audit firm who join an audit client? Should registrants have to disclose on a timely basis if they hire a partner or other senior audit professional assigned to the company's audit.[150] If so, where should the disclosure appear?

(d) *Employment at accounting firm of former employee of audit client.* Proposed rule 2–01(c)(2)(iv) describes the circumstances under which employment of a former officer, director, or employee of an audit client or its affiliate as a partner, principal, or shareholder of the accounting firm will impair an auditor's independence. This provision, in a sense, mirrors the restrictions on employment by an audit client of former partners or employees of an accounting firm.

When the employee of an audit client joins an accounting firm, the independence rules must ensure that the former employee is not in a position to influence the audit of his or her former employer.[151] Participating in that

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[144] *See generally AUSA Life Ins. Co.* v. *Ernst & Young, supra* note 120.

[145] *See* Auditing Standards Division, AICPA, ''Audit Risk Alert—1994, General Update on Economic, Accounting, and Auditing Matters,'' at 35 (1994).

A few litigation cases suggest auditors need to be more cautious in dealing with former coworkers employed by a client. None of these cases involved collusion or an intentional lack of objectivity. Nevertheless, if a close relationship previously existed between the auditor and a former colleague now employed by a client, the auditor must guard against being too trusting in his or her acceptance of representations about the entity's financial statements. Otherwise, the auditor may rely too heavily on the word of a former associate, overlooking that a common interest no longer exists.

[146] *See* Paul M. Clikeman, ''Close revolving door between auditors, clients,'' *Accounting Today,* at 20 (July 8–28, 1996). *Cf. In the Matter of Richard A. Knight,* AAER No. 764 (Feb. 27, 1996) (individual allegedly learned of accounting misstatements while he was engagement partner for firm conducting audit and resigned to become registrant's executive vice president and chief financial officer).

[147] *See, e.g., AUSA Life Ins. Co.* v. *Ernst & Young, supra* note 120; AICPA Board of Directors, *Meeting the Financial Reporting Needs of the Future: A Public Commitment From the Public Accounting Profession,* at 4 (June 1993) (''AICPA Board Report''); *see also* Staff Report, *supra* note 23, at 51–52; In addressing an example of this problem, the court in *Lincoln S&L* v. *Wall,* 743 F. Supp. 901, 917 n.23 (D.D.C. 1990) wrote:

Atchison, who was in charge of the Arthur Young audit of Lincoln, left Arthur Young to assume a high paying position with Lincoln. This certainly raises questions about Arthur Young's independence. Here a person in charge of the Lincoln audit resigned from the accounting firm and immediately became an employee of Lincoln. This practice of ''changing sides'' should certainly be examined by the accounting profession's standard setting authorities as to the impact such a practice has on an accountant's independence. It would seem that some ''cooling off period'' perhaps, one to two years, would not be unreasonable before a senior official on an audit can be employed by the client.

[148] In response to these and other concerns, the AICPA Board of Directors suggested in 1993 that we prohibit a public company from hiring the partner responsible for the audits of that company's financial statements for a minimum of one year after the partner ceases to serve that company. *See* AICPA Board Report, *supra* note 147, at 4. Our staff has indicated, however, that, if implemented, this suggestion would take the form of the firm's independence being impaired for one year from the date the individual left the audit engagement, rather than as a prohibition on hiring the former partner. Staff Report, *supra* note 23, at 52 n.146. *See also* Committee of Sponsoring Organizations of the Treadway Commission (''COSO''), ''Fraudulent Financial Reporting: 1987–1997: An Analysis of U.S. Public Companies,'' at 21 (1999) (finding, with respect to companies where there was fraudulent financial reporting, that among 44 companies for which there was information available on their CFO's background, 11 percent of the companies' CFOs had previous experience with the companies' audit firms immediately prior to joining the company).

[149] To avoid adverse tax consequences to the individual, accounting firms often settle their retirement obligations to former partners by fully funding a ''rabbi trust'' from which payments will be made to the individual. As defined by proposed rule 2–01(f)(18), a ''rabbi trust'' is an irrevocable trust whose assets are not available to the firm until all benefit obligations have been met but are subject to claims of the firm's creditors in bankruptcy or insolvency.

[150] *See* Letter from Association for Investment Management and Research to Arthur Siegel, Executive Director, ISB, dated Feb. 29, 2000, at 4 (''AIMR Letter'').

[151] Of course, once an employee of an accounting firm, the person would also be subject to all other independence requirements applicable to other firm members. For example, if the former audit client employee becomes a covered person, he or she could have no financial interest in the audit client. *See* proposed rule 2–01(c)(1)(i)(A).

audit might require the former employee to audit his or her own work. Accordingly, the rule provides that independence is impaired unless the former employee does not participate in and is not in a position to influence the audit of the financial statements of the audit client or its affiliate for any period during which he or she was employed by or associated with that audit client or its affiliate.

We solicit comment on whether additional or other procedures should be implemented when a former employee of an audit client joins the accounting firm? If so, what should they be? Should the rule also apply to professional employees of the accounting firm?

3. Business Relationships

Proposed rule 2–01(c)(3) describes the business relationships that impair an auditor's independence from an audit client. It continues the Codification's current standard that an auditor's independence with respect to an audit client is impaired when the accounting firm, or a covered person in the firm, has a direct or material indirect business relationship with an audit client, an affiliate of an audit client, or either of their officers, directors, or shareholders holding five percent or more of the audit client's equity securities.[152] As is true today, under proposed rule 2–01(c)(3), an accountant's independence is not impaired solely because the accountant has a business relationship with the audit client in which the accountant provides professional services to the audit client except for those specified in rule 2–01(c)(4) or acts as ''a consumer in the ordinary course of business.''

Because of recurring issues in this area, we have attempted to set forth in proposed rule 2–01(f)(11) a workable definition of ''consumer in the ordinary course of business.'' In general, an accountant acts as a ''consumer in the ordinary course of business'' when the accountant buys ''routine'' products or services on the same terms and conditions that are available to the seller's other customers or clients.[153] An accountant is not acting as a ''consumer'' if it resells the client's products or services. Likewise, a purchase is not ''in the ordinary course of business,'' nor is the product ''routine,'' if it is significant to the firm or its employees. For example, an over-the-counter purchase of office supplies at customary prices would be considered in the ordinary course of business. Purchasing items other than on normal, customary terms, or acting as an agent, value-added reseller, or marketer of the client's products, however, would not be acting as a consumer in the ordinary course of business.

We considered whether to address each business relationship that would impair an auditor's independence. Because there are vast, varied, and constantly shifting types of business relationships, we determined not to attempt to identify all such business relationships. We have retained, however, a number of the examples currently found in the Codification to provide guidance on permissible and impermissible business relationships.[154]

We solicit comment on all aspects of paragraph (c)(3). Is the definition of ''consumer in the ordinary course of business'' appropriate? If not, how should it be modified? Should an auditor be allowed to resell its audit client's products? For example, should an auditor be allowed to act as a reseller of a client's software products to other clients of the auditor? Would the answer change if the sales to the auditor exceed some percentage of the client's revenues such as ten percent?

Should an auditor be permitted to enter into any of the following types of business relationships with an audit client without impairing independence, and why or why not: (i) Strategic alliances such as joint marketing arrangements of the products or services of the audit client or auditor; (ii) joint ventures or other similar activities to develop or market new products or services; or (iii) prime/subcontractor relationships? Should any of these relationships be permitted if they do not result in the auditor and audit client sharing any revenues, costs or profits? Should any of these relationships be permitted if they do not result in any revenue, cost or profit sharing that is material to the audit partner, the audit firm, or the audit client?

Are there other business relationships that impair independence that the rules do not cover? Should we retain the ''direct or material indirect business relationship'' formulation or are there other formulations that would provide additional or more precise guidance? Should we adopt rules addressing particular business relationships based on the examples of direct and material indirect business relationships in the Codification?

In addition, we request comment on business relationships between other persons or entities related to the accountant that might affect the independence of the accountant. For example, suppose that XYZ Corp., an audit client of ABC Accounting Firm, manufactures coffee mugs. The spouse of Partner A, who is the partner in charge of the audit of XYZ, purchases coffee mugs from XYZ Corp., applies decorative logos, and sells the mugs to customers. The spouse purchases the mugs at a price that is below the normal selling price. Would a reasonable investor perceive that accountant's independence to be impaired?

D. Non-Audit Services

Historically, accounting firms have provided consulting and other non-audit services to their audit clients.[155] As noted elsewhere in this release, however, for many years consulting services for SEC registrants constituted a relatively minor portion of the firms' revenues.[156] In recent years, firms have expanded the scope of services they offer to audit and other clients.[157]

Current Rule 2–01 states that our independence requirements apply to ''any professional employee involved in providing [on behalf of an accounting firm] any professional service'' to an audit client. The current rule further states that in making independence determinations, we will consider ''all relevant circumstances, including evidence bearing on all relationships between the accountant and [the client].''[158] Our independence requirements, therefore, apply to all persons at an accounting firm who provide non-audit services to audit clients, and we consider those services in making independence determinations. These principles remain unchanged in the rule proposal.

The proposed rules, like our current independence requirements, govern

[152] *See* Codification § 602.02.g. As under the current business relationship standard, the term ''business relationships'' does not encompass sales of professional services by the accounting firm to a company.

[153] The definition of ''consumer in the ordinary course of business'' does not include situations in which an accountant sells, rather than purchases, the audit client's products or services.

[154] *See infra* Section IX.

[155] The AICPA describes ''consulting services'' as follows:

Consulting services differ fundamentally from the CPA's function of attesting to the assertions of other parties. In an attest service, the practitioner expresses a conclusion about the reliability of a written assertion that is the responsibility of another party, the asserter. In a consulting service, the practitioner develops the findings, conclusions, and recommendations presented. The nature and scope of work is determined solely by the agreement between the practitioner and the client. Generally, the work is performed only for the use and benefit of the client.

AICPA Professional Standards: Consulting Services—Definitions and Standards, CS § 100.02.

[156] *See supra* Section II.C; *see also* Appendix B.

[157] *See* Appendix A.

[158] Rule 2–01(c).

non-audit services provided by an accountant to an audit client during the audit and professional engagement period. They do not govern non-audit services when provided to persons other than audit clients. We request comment on this approach.

1. The Proposals

(a) *General Rule.* Proposed rule 2–01(c)(4) states the general rule that an auditor's independence is impaired if providing services to an audit client or its affiliate is inconsistent with the standard in proposed rule 2–01(b). The rule is derived from current Rule 2–01 and our releases that have been incorporated into the Codification. Proposed rule 2–01(c)(4) identifies certain services that are incompatible with the principles set forth in proposed rule 2–01(b), even when the audit client, by contract or otherwise, accepts ultimate responsibility for the work performed or for any decision made.

The rule does not provide an all-inclusive list of the services that are incompatible with proposed rule 2–01(b). Whether the provision of a non-audit service not specified in the proposed rule impairs an accountant's independence will be measured against the four general principles set forth in proposed rule 2–01(b). We request comment on whether there are any services listed in Appendix A that would raise independence concerns if provided by the accounting firm to the audit client? If so, what are they, and why do they raise independence concerns? Are there other non-audit services that are not on the list in Appendix A that raise independence concerns? If so, what are they, and why do they raise independence concerns?

We request comment on whether, if you are a registrant, your company, board of directors, or audit committee have a policy or practice of not hiring your independent auditors to provide non-audit services, other than income tax services. We request comment from registrants about what non-audit services you hire your auditor to provide, other than tax services.

We also request comment on whether allowing certain non-audit services to be provided to audit clients is a viable approach, or whether banning all non-audit services for audit clients is the only appropriate approach. Should such a ban exclude tax services?

(b) *Specific Non-Audit Services that Impair Independence.*

(i) *Bookkeeping or other services related to the audit client's accounting records or financial statements.* Currently, an auditor's independence is impaired if the auditor provides bookkeeping services to an audit client or an audit client's affiliate.[159] Proposed rule 2–01(c)(4)(i)(A) continues that position. When an accounting firm provides bookkeeping services for an audit client, the auditor auditing that client's financial information may be auditing his or her accounting firm's work. If, during an audit, an auditor must audit the bookkeeping work performed by his or her accounting firm, it is questionable that the auditor could, or that reasonable investors would believe that the auditor could, remain objective and impartial. If the auditor found an error in the bookkeeping, the auditor could well be under pressure not to raise the issue with the client, if raising the issue could jeopardize the firm's contract with the client for bookkeeping services.

Because there may be bookkeeping tasks that do not involve financial information or that do not otherwise need to be considered in the audit, we have narrowed the definition to services involving maintaining or preparing the audit client's or its affiliate's accounting records or financial statements, or generating financial information to be disclosed by the audit client, or its affiliate, to the public.[160]

We request comment on whether performing bookkeeping or preparing financial records or statements for an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. If not, why not? Should the definition of bookkeeping be further clarified? If so, how? Does the definition cover all the bookkeeping services that would impair an accountant's independence?

(ii) *Financial information systems design and implementation.* Under the proposed rule, an accountant is not independent if the accountant designs or implements a hardware or software system that is or will be used to generate information that is significant to the audit client's financial statements taken as a whole. By ''significant'' we refer to information that is reasonably likely to be material to the financial statements of the audit client or its affiliate. Since materiality determinations cannot be made before financial statements are generated, the accounting firm by necessity will need to evaluate the general nature of the information rather than only system output during the period of the audit engagement. An accountant, for example, would not be independent of an audit client for which it designed an integrated Enterprise Resource Planning (ERP) system.[161]

Designing or implementing systems affecting the financial statements may create a mutual interest between the client and the accountant in the success of that system, supplant a fundamental business function, or result in the accountant auditing his or her own work. For example, if an auditor designs and installs a computer system that generates the financial records, and that system generates incorrect data, the accountant is placed in a position of having to report on its own work. When an accountant audits the accountant's own work, investors may perceive that the accountant will be unwilling to challenge the integrity and efficacy of the client's financial or accounting information collection systems that the accountant designed or implemented.

Our proposed rule would not, however, cover services in connection with the assessment, design, and implementation of internal accounting and risk management controls. Accountants often gain an understanding of their audit clients' systems of internal accounting controls. With this insight, auditors often become involved in diagnosing, assessing, and recommending to audit committees and management, ways in which their audit client's internal controls can be improved or strengthened. These services can be extremely valuable to companies, and they may also bring benefits to the performance of a quality audit, such as through increased knowledge of the audit client's business.

At the same time, we recognize that when an auditor designs and implements its audit client's internal accounting and risk management control systems, some might believe that the auditor will lack objectivity if called upon to audit financial statements that are derived at least in part from data from those systems. Testing of these controls is often an integral part of any

[159] Codification § 602.02.c.i.

[160] As noted in section 602.c.iii of the Codification, we determined not to raise questions of independence solely because a foreign office of, or a foreign firm associated with, a domestic accounting firm performs limited, routine, or ministerial bookkeeping services for a foreign division, subsidiary or investee of a domestic registrant which is a client of that firm. The Commission stated that a comparison of the fees for the bookkeeping services and the audit should provide a fair test for determining the significance of the work to the registrant and the accountant and, indirectly, the possible effect on the firm's independence. Accordingly, the Commission limited the fees for such services to the greater of $1,000 or one percent of the total audit fee for the registrant. The Commission continues to recognize the need for relief in this area and has therefore retained this section of the Codification.

[161] This includes designing or implementing such a system for an affiliate of the audit of client, if the system is used to generate information that is significant to the audit client's financial statements taken as a whole.

audit of the financial statements of a company. Do such services result in the auditor auditing their own work? Would such services impair an auditor's independence if the auditor were required to issue an opinion on the effectiveness of the control systems that he or she designed or implemented?

We believe there is relatively little reason for concern about an audit firm's work on hardware or software systems that are unrelated to the audit client's financial statements or accounting records. Accordingly, our proposed rule does not prohibit an accounting firm from providing such services for non-financial or tax purposes where the results of the valuation do not have a direct impact on the financial statements.

We request comment on whether designing or implementing financial information systems poses a threat to an auditor's independence. Is an auditor's independence impaired when the auditor designs, selects or helps select, implements, or tests computer software and hardware systems that generate financial data used in or underlying the financial statements? Why or why not?

Whether a system is used to generate information that is ''significant'' to the audit client's financial statements may depend on the size of the engagement. Does the magnitude of the fees for such services make a difference? For example, if the auditor is hired to do a major new system design and implementation for which the fees will exceed the audit fee, is the auditor's independence impaired or would reasonable investors perceive the auditor's independence to be impaired? What if the consulting fees do not exceed the audit fee, but are significant in relation to the audit fee? What if the consulting fees are much larger than the audit fee?

Is having the audit committee pre-approve these computer systems consulting arrangements sufficient to monitor and ensure the auditor's independence? Why or why not? Would disclosure of such an arrangement make a difference? Why or why not?

Some believe that with the current pace of technological innovation, the quality of audits in the future will be even more dependent on internal controls over the electronic processing of information and data. If so, is auditor independence impaired if auditors are permitted to design and implement the systems that process the information and data, then audit these systems in the course of the audit engagement?

(iii) *Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.* The proposals would provide that the auditor is not independent if the auditor provides appraisal or valuation services, fairness opinions or contribution-in-kind reports, [162] where there is a reasonable likelihood that the results will be audited by the auditor. [163] Appraisal and valuation services include any process of valuing assets, both tangible and intangible, or liabilities. They include valuing, among other things, in-process research and development, financial instruments, assets and liabilities acquired in a merger, and real estate. Fairness opinions and contribution-in-kind reports are opinions and reports in which the firm provides its opinion on the adequacy of consideration in a transaction. Providing these services to audit clients raises several auditor independence concerns. When it is time to audit the financial statements, the accountant could well end up reviewing his or her own work, including key assumptions or variables that underlie an entry in the financial statements. [164] Also, where the appraisal methodology involves projection of future results of operations and cash flows, the accountant that prepares the projection could have a mutuality of interest with the client in attaining forecast results. The auditor may feel constrained by the valuation and appraisal issued by the firm, and as a result, the auditor may be unable to evaluate skeptically and without bias the accuracy of that valuation or appraisal. Our proposals do not prohibit an accounting firm from providing such services for non-financial (*e.g.,* tax) purposes.

We request comment on whether providing appraisal or valuation services and issuing fairness opinions or consideration-in-kind reports to audit clients would impair, or appear to reasonable investors to impair, an accountant's independence. Does providing valuation or appraisal services that are unrelated to the financial statements, such as for income tax purposes impair an accountant's independence?

Some believe that providing valuations and appraisals does not impair the auditor's independence when the amounts involved are likely to be immaterial to the financial statements that later would be reviewed by the auditor. Should we provide an exception in our rule to cover this situation? If so, would the auditor/consultant be able to determine in advance of the valuation work being performed whether amounts may be material to the financial statements currently and in the future?

Are there certain types of appraisal or valuation services, or certain instances in which they are provided, that do not raise auditor independence concerns? Are there circumstances in which an accounting firm may be required by law or regulation to provide such services, either in the United States or abroad? If so, please describe them. How should our rules address them?

(iv) *Actuarial services.* The SECPS defines actuarial services to include: (i) assisting management to develop appropriate methods, assumptions, and amounts for policy and loss reserves presented in financial reports, based on the company's history, current practice and future plans; (ii) assisting management in the conversion of financial statements from a statutory basis to one in conformity with GAAP; (iii) analyzing actuarial considerations and alternatives in federal income tax planning; and (iv) assisting management in the financial analyses of various matters, such as proposed new policies and business acquisitions. [165] Providing actuarial services may affect amounts reflected in an audit client's financial statements and result in an accountant auditing his or her own work.

The proposals, therefore, provide that the accountant is not independent if the auditor provides any advisory service involving the determination of policy reserves and related accounts for the audit client or its affiliate, unless the audit client uses its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities. The SECPS already prohibits member accounting firms from providing certain actuarial services.

Does providing actuarial services to an audit client, such as the calculation of actuarial reserves or determining key actuarial assumptions, impair an auditor's independence? Sometimes auditors provide consulting services to their audit clients concerning employee benefit plans. While the consulting services may range from providing tax advice to complete development and ongoing administration of the plan and plan records, many of these services

[162] Contribution-in-kind reports in certain foreign countries require the auditor to express an opinion on the fairness of a transaction, the value of a security, or the adequacy of consideration to shareholders.

[163] The ISB has identified threats to the independence of firms that perform appraisal and valuation services for audit clients. *See* ISB, Discussion Memorandum 99–3, *supra* note 9, at 7–9 (Sept. 1999).

[164] *See generally* Codification § 602.02.c.

[165] *See* SECPS, Organizational Structure and Functions of the SECPS of the AICPA Division for CPA Firms, at § 1000.35 (June 1997) (''SECPS Manual'').

require computation of future benefit levels. Does providing such services impair an auditor's independence with respect to the audit client or the audit of the plan?

Auditors also sometimes prepare or assist an audit client in preparing its annual pension plan reports, from which the financial data are derived to be used in recording the appropriate pension plan information in the financial statements. Does providing this service for an audit client impair the independence of the auditor? Would the auditor's independence be impaired if management provided all of the significant data and key assumptions, and the auditor merely input these data into its computer model to generate the necessary information for the accounting records and financial statements?

Are there certain circumstances under which an accountant can provide actuarial services to an audit client without impairing independence? Have we appropriately described the actuarial services that give rise to independence concerns?

(v) *Internal audit outsourcing.* The line between performing management functions and performing an audit is not always clear. Our staff has received numerous questions about where to draw this line in general, and where to draw this line with respect to ''internal audit outsourcing'' in particular. Companies ''outsource'' internal audit functions by contracting with an outside source to perform all or part of their audits of internal controls. As emphasized by the Committee of Sponsoring Organizations (''COSO''), internal auditors play an important role in evaluating and monitoring a company's internal control system.[166] As a result, internal auditors are, in effect, part of a company's system of internal accounting control.

Since the external auditor generally will rely, at least to some extent, on the internal control system when conducting the audit of the financial statements,[167] the auditor would be relying on its own work performed as part of the internal controls and internal audit function. In essence, by outsourcing the internal audit function, the auditor assumes a responsibility of the company and becomes part of the company's control system, as opposed to providing consulting advice. Also, there may well be a mutuality of interest where management and the external auditor become partners in creating an internal control system and share the risk of loss if that system proves to be deficient.

Proposed rule 2–01(c)(4)(i)(E) provides that an auditor is not independent when the auditor performs certain internal audit services for an audit client or an affiliate. This does not include nonrecurring evaluations of discrete items or programs that are not in substance the outsourcing of the internal audit function. It also does not include operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

In 1996, the Ethics Committee of the AICPA published a revised ruling concerning internal audit outsourcing.[168] It states that AICPA members may perform ''extended audit services,'' including internal audit outsourcing services, provided the member or his or her firm does not act or appear to act in a capacity equivalent to a member of client management or as an employee. Under the ruling, an AICPA member may conduct ''separate evaluations'' of the effectiveness of a client's internal controls.[169] The client, however, among other things, must designate a competent member of management to: (i) Be responsible for the internal audit function, (ii) determine the scope, risk, and frequency of internal audit activities, including those to be performed by the member, (iii) evaluate the findings and results arising from the internal audit activities, and (iv) evaluate the adequacy of the audit procedures performed and the findings resulting from performance of those procedures. The ruling also contains examples of activities that, if performed by the member, would be considered to impair that member's independence.[170] The staff has interpreted the language of this ruling narrowly: if the performance of internal audit work entails *any* managerial or employee function, audit independence is adversely affected.

The COSO Report defines certain tasks for management related to separate evaluations, including deciding on scope; analyzing control evaluation work by internal auditors; prioritizing high risk areas; considering the scope, time-frame, methodology, tools, input to be used, and means of reporting findings; reviewing findings; and ensuring follow-up actions are taken. *Id.* at 76.

As noted above, the proposal does not follow the AICPA because we believe performing an internal audit function results in the auditor assuming a management function and, during the audit, relying on a system that the auditor has helped to establish or maintain. We solicit comment on whether internal outsourcing would impair, or would appear to reasonable investors to impair, an auditor's independence. Does it impair an auditor's independence if the auditor does not outsource the internal audit function of the audit client, but rather performs individual audit projects for the client? Would it impair the auditor's independence if the auditor performs only operational audits that are unrelated to the internal controls, financial systems, or financial statements?

(vi) *Management functions.* Proposed rule 2–01(c)(4)(i)(F) provides that an accountant's independence is impaired with respect to an audit client for which the accountant acts, temporarily or permanently, as a director, officer, or employee of an audit client, or an affiliate of the audit client, or performs any decision-making, supervisory, or ongoing monitoring functions. This provision is consistent with the provisions of existing Rule 2–01(b).

We request comment on whether there are circumstances under which an accounting firm can perform or assume management functions or responsibilities for an audit client without impairing independence?

(vii) *Human resources.* Proposed rule 2–01(c)(4)(i)(G) provides that an auditor's independence is impaired with respect to an audit client when the

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[166] *See also* Committee of Sponsoring Organizations of the Treadway Commission (''COSO''), *Internal Control—Integrated Framework,* at 7 (1992) (the ''COSO Report'').

[167] AICPA SAS No. 55, AU § 319 (effective for audits on or after Jan. 1, 1990).

[168] AICPA Code of Professional Conduct, ET § 101.15 (Omnibus Proposal of Professional Ethics Division Interpretations and Rulings (June 1996)).

[169] COSO Report, *supra* note 166, discussed what constitutes an acceptable internal control system. Monitoring, according to the report, has two parts: ongoing monitoring activities and separate evaluations. The first is a management function, and the second is not.

''Ongoing monitoring'' occurs in the course of operations, and includes regular management and supervisory activities. *Id.* at 3. Ongoing monitoring procedures are built into the normal recurring operations of an entity. *Id.* at 72. Separate evaluations, on the other hand, are not conducted on a continuing basis. The scope and frequency of separate evaluations depend primarily on management's assessments of the effectiveness of the ongoing monitoring procedures and the amount of information necessary for management to have reasonable assurance about the effectiveness of the internal control system. *Id.* at 3, 71.

[170] *Supra* note 168. These examples include the performance of ongoing monitoring activities that affect the execution of transactions or ensure that transactions are properly executed, accounted for, or both; and the performance of routine activities in connection with the client's operating or production processes that are equivalent to those of an ongoing compliance or quality control function.

auditor recruits, hires, or designs compensation packages for, officers, directors, or managers of the audit client or its affiliate. Under the proposed rule, an auditor's independence also is impaired when the auditor advises an audit client about its or its affiliate's management or organizational structure, when it develops employee evaluation programs, or conducts psychological or other formal testing of employees.[171]

Assisting management in human resource selection or development places the auditor in the position of having an interest in the success of the employees that the auditor has selected, tested, or evaluated. Accordingly, an auditor may be reluctant to suggest the possibility that those employees failed to perform their jobs appropriately, or at least reasonable investors might perceive the auditor to be reluctant, because doing so would require the auditor to acknowledge shortcomings in its human resource service. The auditor would also have other incentives not to report such employees' ineffectiveness, including that the auditor would identify and be identified with the recruited employees.

We request comment on whether providing human resource services would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there any types of human resource and employee benefit services rendered that are included in Appendix A that do or do not impair an auditor's independence?

Is an auditor's independence impaired when the accounting firm does an executive search for an audit client? Would an auditor's independence be impaired if the auditor provided personnel hiring assistance for only non-executive or non-financial personnel?

Does it impair an auditor's independence if the auditor provides consultation with respect to the compensation arrangements of the company's executives? Is an auditor's independence impaired if the auditor outsources an audit client's human resource department or similar functions? Are there circumstances in which outsourcing these functions would not impair independence?

(viii) *Broker-dealer, investment adviser or investment banking services.* The proposed rule provides that an accountant is not independent if the accountant acts as a securities professional for an audit client or an affiliate of the audit client. Examples include serving as a broker-dealer, promoter, underwriter, investment adviser, or analyst of the audit client's or an affiliate of the audit client's securities; designing the audit client's or its affiliate's system for compliance with broker-dealer or investment adviser regulations; or recommending the purchase or sale of securities issued by an audit client or its affiliate. Our existing regulations take note of the mutuality of interest created by providing services of this type.[172] Selling—directly or indirectly—an audit client's securities is incompatible with the auditor's responsibility of assuring the public that the company's financial condition is fairly and accurately presented.

We solicit comment on whether providing these services would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there situations in which an accountant could serve as a promoter or underwriter of an audit client's or an affiliate of an audit client's securities without impairing independence?

Broker-dealers often give advice and recommendations on investments and investment strategies. Investment advisers give similar advice. The value of that advice is measured principally by the performance of a customer's securities portfolio. When the customer is an audit client, the accountant has an interest in the value of the audit client's securities portfolio, even as the accountant values the portfolio as part of an audit.

When an accountant, in any capacity, recommends to anyone (including non-audit clients) that they buy or sell the securities of an audit client or an affiliate of the audit client, the accountant has an interest in whether those recommendations were correct. That interest could affect the audit of the client whose securities, or whose affiliate's securities, were recommended. For example, if an auditor uncovers an accounting error in a client's financial statements, and the auditor had, in an investment adviser capacity, recommended that client's securities to investment clients, the auditor performing the audit may be reluctant to recommend changes to the client's financial statements if the changes could negatively affect the value of the securities recommended by the auditor to its investment adviser clients. We solicit comment on whether recommending the purchase or sale of the securities of an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. Will there be an independence impairment if the accountant's broker-dealer customers or investment adviser customers hold substantial positions in audit client securities, even though the accountant did not recommend those securities? We request comment on whether acting as a broker-dealer or an investment adviser for an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence.

An accountant acting as a securities analyst for an audit client or an affiliate of an audit client has a mutuality of interest with the audit client. An analyst often prepares research reports that are used to promote or market the securities of their client. In addition, an auditor may be placed in a conflict if the audit results in the auditor obtaining information that casts doubt on the analyst's opinion. We solicit comment on whether serving as a securities analyst for an audit client's or an affiliate of an audit client's securities would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there circumstances in which an accountant could act as a securities analyst for an audit client's or an affiliate of an audit client's securities without impairing independence?

Independence issues also arise when an accountant designs an audit client's or an affiliate of an audit client's system for complying with broker-dealer or investment adviser regulations. To the extent that, during the performance of the audit, the auditor relies on the controls that are part of compliance systems designed by the accountant, the accountant will end up in the position of auditing its own work.

We solicit comment on whether designing an audit client's or an affiliate of an audit client's system for compliance with broker-dealer or investment adviser regulations would impair, or would appear to reasonable investors to impair, an auditor's independence. If an accountant has an audit client who is a broker-dealer or an investment adviser, and the accountant designs the client's system for regulatory compliance, will the financial audit necessarily encompass reviewing or auditing any aspect of that system or its performance?

We further solicit comment on the scope of the proposal. Are there other securities professional services that the

[171] This proposal is consistent with SECPS Manual § 1000.35, *supra* note 165.

[172] Rule 2–01(b), 17 CFR 210.2–01(b); Codification § 602.02.e.iii. These regulations indicate that activities such as recommending securities, soliciting customers, and executing orders provide investors with sufficient reason to question the auditor's ability to be impartial and objective.

rule should expressly identify as impairing independence?

(ix) *Legal services.* The proposed rule provides that an accountant is not independent of an audit client if the accountant provides any service to the audit client or its affiliates that, in the jurisdiction in which the service is provided, may be provided only by someone licensed to practice law. This proposal is consistent with current regulations, under which legal services are deemed to be incompatible with auditor independence.[173] A lawyer's core professional obligation is to advance clients' interests. Rules of professional conduct require the lawyer to ''represent a client zealously and diligently within the bounds of the law.'' [174] The lawyer must ''take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor * * *. In the exercise of professional judgment, a lawyer should always act in a manner consistent with the best interests of the client.'' [175] Unlike an auditor, a lawyer takes basic direction from the client. In addition, a lawyer has a near absolute duty to safeguard the confidences of his or her client.[176] We have long maintained that an individual cannot be both a zealous legal advocate for management or the client-company, and maintain the objectivity and impartiality that are necessary for an audit. As noted above, the Supreme Court has agreed with our view. In *Arthur Young,* the Supreme Court emphasized, ''If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost.'' [177]

We recently reiterated our views in a settled enforcement action.[178] In addition, the staff wrote to the American Bar Association and to its Commission on Multidisciplinary Practices (''ABA Commission'') explaining the impairment of auditor independence that is created when a firm provides both audit and legal services to an entity required to file audited financial statements with the SEC.[179] In its final report, the ABA Commission adopted this view. In discussing legal and attest services, the report states, ''The Commission explicitly recognizes their incompatibility. It does not believe that a single entity should be allowed to provide legal and audit services to the same client.'' [180] We continue to believe that a fundamental conflict exists between the roles of an independent auditor and an attorney.[181]

We request comment on whether providing legal services to an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there any particular legal services that should be exempted from the rule? Does making the rule's application depend upon the jurisdiction in which the service is provided leave the rule subject to any significant uncertainty, or pose the prospect of any significant complexity or unfairness? Should there be any exception for legal services provided in foreign jurisdictions? If so, why?

(x) *Expert services.* The proposed rule states that an accountant's independence is impaired as to an audit client if the accountant renders or supports expert opinions for the audit client or an affiliate of the audit client in legal, administrative, or regulatory filings or proceedings (''expert services''). Clients retain experts to lend authority to their contentions in various proceedings by virtue of the expert's specialized knowledge and experience. The provision of expert services by the accountant creates, at the very least, the appearance that the accountant is acting as the client's advocate in pursuit of the client's interests. The appearance of advocacy (and the corresponding appearance of mutual interest) created by providing expert services is sufficient to deem the accountant's independence impaired.[182] Our proposals would not prohibit an auditor from testifying as a fact witness to its audit work for a particular audit client. In those instances, the auditor is merely providing a factual account of what he or she observed and the judgments he or she made.

We solicit comment on whether providing expert services on behalf of an audit client or an affiliate of an audit client would impair, or would appear to reasonable investors to impair, an auditor's independence. Are there circumstances in which providing audit clients with expert services in legal, administrative, or regulatory filings or proceedings should not be deemed to impair independence? We also solicit comment on whether an auditor should be permitted to serve as a non-testifying expert for an audit client in connection with a proceeding in which the auditor's work does not provide a basis for testimony by an expert.

An auditor may provide an audit client a written report or ''opinion'' on the application of an accounting principle to a particular transaction in accordance with AU § 625. Such advice aids the audit client in determining the appropriate accounting for a transaction. However, an auditor may also provide such an opinion that is not used primarily by the audit client in the preparation of its financial statements, but rather to market a product to third parties. Does it impair the independence of the auditor when it issues an opinion on the application of an accounting principle that is used primarily to market a product to third parties?

(xi) *Tax services.* The proposed rule would not affect tax-related services provided by auditors to their audit clients. Tax services are unique, not only because there are detailed tax laws that must be consistently applied, but also because the Internal Revenue Service has discretion to audit any tax return. We do not think that the Congressional purpose for requiring independent audits is thwarted by an accountant providing traditional tax preparation services to an audit client or an affiliate of an audit client.

We are considering whether special considerations apply when the auditor provides a tax opinion for the use of a third party in connection with a business transaction between the audit client and the third party. The tax opinion may be vital in the audit client's efforts to induce the third party

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[173] Codification § 602.02.e.ii.

[174] *See, e.g.*, D.C. Rules of Professional Conduct, Rule 1.3(a).

[175] *Id.* at cmts. 1, 5.

[176] *Id.* at Rule 1.6.

[177] *Arthur Young, supra* note 19, at 819–20 n.15.

[178] *In the Matter of Charles Falk,* AAER No. 1134 (May 19, 1999) (formally disciplining an attorney/accountant who gave legal advice to an audit client of another partner in his accounting firm).

[179] Letter from Harvey J. Goldschmid, Lynn E. Turner, and Richard H. Walker, SEC, to Philip S. Anderson, President, American Bar Association, dated July 12, 1999; Letter from Lynn E. Turner, Chief Accountant, SEC, to Sherwin P. Simmons, Chair, Commission on Multidisciplinary Practice, dated Jan. 22, 1999. Except with respect to the matter of auditor independence, we have not taken a position on the development of multidisciplinary practices.

[180] American Bar Association Commission on Multidisciplinary Practice, *Report to the House of Delegates,* at 5 (July 2000) (footnote omitted). The report is available at www.ABAnet.org/cpr/mdpfinalrep2000.html.

[181] *See also* ISB, ''Discussion Memorandum 99–4: Legal Services'' (Dec. 1999).

[182] Existing auditor independence regulations recognize the problem posed by expert services. *See* Codification §§ 601.01 & 602.02.e. Moreover, in connection with its report on auditor independence, the GAO cited a congressional staff report issued in 1977 that ''raised concerns involving situations where accountants testify before public bodies advocating positions that are favorable to their clients.'' GAO Report, *supra* note 45, at 47. That congressional study related to auditing firms' testimony before Congress on oil and gas pricing issues and stated, ''Conflicts of interest occur when 'Big Eight' firms influence governmental authorities on matters which affect their corporate clients.'' Subcomm. on Reports, Accounting and Management of the Senate Comm. on Government Operations, ''The Accounting Establishment: A Staff Study,'' 95th Cong., 1st Sess., Doc. No. 95–34, at 67 (1977).

to enter into the transaction, particularly when the transaction is tax-driven. Under those circumstances, the auditor may be acting as an advocate for the audit client by actively promoting the client's interests.

We request comment on whether providing tax opinions, including tax opinions for tax shelters, to an audit client or an affiliate of an audit client under the circumstances described above would impair, or would appear to reasonable investors to impair, an auditor's independence. Should the rules provide that independence is impaired whenever the auditor provides any tax opinion or any tax opinion that will affect the audit client's financial statements? Does rendering a tax opinion to an audit client affect an auditor's independence considering an auditor must reach an opinion that the financial statements taken as a whole, including the tax accounts, are fairly presented? Are there circumstances in which providing audit clients with tax opinions should not be deemed to impair independence? Are there other tax-related services that if provided to an audit client, would impair, or would appear to reasonable investors to impair, an auditor's independence?

2. Alternatives

We are considering a number of alternatives concerning scope of services. We encourage public comment on each alternative. We may adopt a rule based on one or more of these alternatives instead of the proposed rule or in combination with the proposed rule.

As discussed above, some have suggested that auditors should be prohibited from providing *any* non-audit service to audit clients.[183] We are considering drawing this bright line. This approach may provide investors with the greatest assurance of an auditor's independence. Some believe that such an approach should contain an exception, referred to as an exclusionary rule, that would permit non-audit services to be provided if: (i) Before any non-audit service is rendered to the audit client, the client's audit committee finds that special circumstances make it obvious that the best interests of the company and its shareholders will be served by retaining its audit firm or affiliate to render such non-audit service and that no other vendor of such service can serve those interests as well; (ii) a written copy of that finding is submitted promptly to the SEC and POB; and (iii) the company discloses such finding by the audit committee and the amount paid and expected to be paid to the audit firm or affiliate for such service in the company's next proxy statement for the election of directors.[184]

Is a complete break between audit and non-audit services necessary to give investors confidence that auditors will act without bias and with complete objectivity and independence? Would a complete break be useful for instilling such confidence in investors? Is the exclusionary rule a reasonable alternative to a prohibition on non-audit services? How should the exclusionary rule be modified?

We are also considering whether the rules should identify services that would not impair an auditor's independence. These would include services that are a natural outgrowth of the audit process, by building on information learned, and analyses conducted, during the audit. Examples might include business risk assessments, tax services, actuarial valuations of pension and other post-employment benefits or similar liabilities, consulting on the client's internal controls, and similar services. If we pursue this alternative, we might also include a provision stating that these services would nevertheless impair independence if they involved the auditor in making management decisions, operating the client's internal controls or information systems, marketing the client's products, or sharing risks or rewards with the client. We solicit comment on this alternative.

We are also considering whether the independence problems raised by expanded non-audit services can be avoided by structuring a firm to segregate its audit and non-audit businesses into separate autonomous units. Under this approach, the audit, income tax, and certain consulting practices, such as financial advisory and business risk management services, would be placed into an ''audit entity.'' Information and computer technology services, e-commerce, business process reengineering, strategic planning, and other remaining consulting practices would be placed into a separate ''consulting entity.'' Each entity would be managed by individuals not associated with the other entity. Both the audit entity and the consulting entity would be owned and to some extent governed by a common partnership or corporation (''holding entity''), whose board and management would be elected by the respective subsidiary entities. Partners of the audit entity and the consulting entity would own the holding entity.

The holding entity board of directors could be structured to give either entity—or neither—a majority of representatives on the board. The holding entity would retain certain rights, including the right to approve significant transactions, investment, borrowings, or business alliances. The audit and consulting entities would enter into agreements not to compete with each other. In addition, the holding entity, the audit entity, and the consulting entity might share similar, but not identical names, such as ABC Global, ABC LLP, and ABC Consulting, respectively. Partners in the audit entity and consulting entity might market the other entity's services.

In these arrangements, it is common that there would be some level of direct or indirect profit sharing between the audit and consulting entities. The amount of shared profits might depend on whether each met or fell below certain earnings targets. The impact of the profit sharing on an individual owner or partner in the audit or consulting entity would depend on his or her ownership interest in the respective entity. There could also be profit sharing between the audit entity and the consulting entity arising from investments made in other companies.

We request comment on whether such a structure would create a sufficient ''firewall'' between the audit entity and the consulting entity such that the auditor's independence would not be impaired with respect to any services provided by the consulting entity. Are there other ways to construct a firewall that should prevent the consulting entity from being considered an affiliate of the audit entity for purposes of determining the audit entity's independence? Would the independence of the audit entity be impaired if the consulting entity entered into business relationships, such as strategic marketing alliances, with an audit client of the audit entity? Would the independence of the audit entity be impaired if it continued to provide consulting services that generated revenues or profits that were material to the audit entity? Would the independence of the audit entity be impaired if the consulting entity acquired either material or immaterial investments in clients of the audit entity? Would the audit entity's independence be impaired if clients of the audit entity invested in the consulting entity?

[183] *See supra* note 38; The Panel on Audit Effectiveness (''O'Malley Panel''), *Report and Recommendations: Exposure Draft,* at ch. 5, p. 9 (May 31, 2000) (''O'Malley Report''). A copy of the O'Malley Report is available at www.pobauditpanel.org.

[184] *Id.* at 10.

We could require the audit entity and consulting entity to have completely separate management and financial operations, not to ''co-brand'' or use similar names or logos, not to share more than a *de minimis* amount of revenues or earnings (no organization's or partner's earnings would change by more than three percent annually), not to have an equity interest in each other, and not to be contractually or otherwise obligated to refer clients to one another. We request comment on whether any or all of these requirements would suffice to prevent impairments to the audit entity's independence resulting from activities or relationships of the consulting entity.

Under the auditing literature, an auditor is required to discuss matters that may affect the audit with personnel responsible for providing non-audit services to the client-company.[185] Does this requirement prevent the use of firewalls? Are investors harmed if communications between the audit and consulting entities are hindered? If communication is not hindered and there would remain a free flow of information between the audit and consulting entities, should we require other measures to assure independence of the auditors? If we were to pursue this alternative, are there other conditions that should be considered?

We are also considering an alternative that would provide that non-audit services impair independence only when the aggregate fees for those services surpass a certain level in relation to the audit fee. For example, we could adopt a rule stating that an auditor's independence would be impaired if the fees for all non-audit services (excluding tax services) during the most recent fiscal year, and the fiscal year in which the services would be provided, were or would be more than 25 percent of the fee for the audit of the client's financial statements. Does the size of the consulting fees relative to audit fees affect independence? Is the proposed fee comparison an appropriate measure by which to determine whether independence is impaired? If not, what level of non-audit service fees, relative to audit fees, should trigger an impairment of independence?

We also solicit comment on whether not to preclude certain non-audit services, but instead to require companies to disclose substantial information about all the non-audit services received from their auditors. Under this alternative, investors, and not regulators or other interested parties, would decide whether their perceptions of auditor independence were affected by the provision of non-audit services to audit clients. Is disclosure alone sufficient to preserve investor confidence in financial information? Can an impairment of auditor independence be avoided merely by disclosing it?

Several of the largest accounting firms have announced that they have sold, or intend to sell, certain non-audit service lines. We solicit comments relating to those developments and their bearing on this proposed rule. Will the economic forces that gave rise to these transactions cause all or most major accounting firms to divest all or a portion of their consulting service lines? Will economic forces cause those accounting firms that have divested certain consulting service lines to create similar service lines in the future?

3. Transition

We recognize that adoption of the proposed rules could require a registrant to decide between continuing to engage an auditing firm to audit its financial statements and continuing to engage that firm to provide certain non-audit services. It may not be feasible for the registrant and the auditor to cease all ongoing or scheduled non-audit engagements immediately. The company may need time to find a new provider of those services, to complete works in progress, and to provide for a smooth transition from one provider of services to another.

As a result, we propose to include a transition period of two years. Under the proposal, for the two years following the effective date of the rule, providing the non-audit services set forth in subsection (c)(4)(i) to an audit client or an affiliate of an audit client will not impair an accountant's independence from the audit client, if the following holds true: (i) The non-audit services are performed pursuant to a written contract in effect on or before the effective date of this rule; and (ii) performing those services would not impair the auditor's independence under pre-existing requirements of the Commission, the ISB, or the U.S. accounting profession. We believe that two years provides a reasonable time period for the auditor and the audit client to make the necessary elections and conform to the new rules.

We solicit comment on the proposed transition provisions. Do the proposed transition provisions allow an adequate period for implementation? Should the period be longer? If so, how long and why? Could the period reasonably be shorter? If so, what is the shortest transition period that we could reasonably adopt? Are there any conditions other than the two specified in the proposed rule that should be satisfied in order for the services specified in section 2–01(c)(4)(i) not to impair independence during the transition period? Should the condition described in section (c)(4)(ii)(A)—that the non-audit services performed during the transition period be pursuant to a written contract in effect on or before the effective date of the rule—require that the contract be in writing?

E. Contingent Fees

Proposed rule 2–01(c)(5) provides that an accountant is not independent under the standard of paragraph (b) of the rule if the accountant provides any service to an audit client or an affiliate of an audit client for a contingent fee, or receives a contingent fee from an audit client or an affiliate of an audit client. Contingent fee arrangements will typically result in the auditor having a mutual interest with the client. If, for example, a firm arranged to receive an audit fee of $200,000, but half of that fee was contingent upon the audit client successfully completing an initial public offering within the following year, the auditor would have a mutual interest with the audit client in the success of the client's planned IPO, and in the continuing viability of the audit client. That mutuality of interest could influence the auditor's conduct of the audit.

A ''value added'' fee may be another example of a contingent fee arrangement that presents independence problems. An accounting firm might arrange to provide a non-audit service to a client for a ''value added'' fee, meaning that the amount of the fee will depend upon the additional value, profit, or other benefit recognized by the client because of the non-audit service. For example, an audit may undertake a study of certain types of a client's expenditures in order to identify greater amounts of qualifying expenses that would result in greater income tax credits. Fees for such services might be based on a percentage of the tax credits generated, a base fee plus a percentage of tax credits generated over a pre-determined base amount, or a base fee plus a ''value added'' amount to be added to the base fee.

The accounting firm will have an interest in a high valuation of the benefit to the client from the service that had been provided for a contingent fee. In the situation described above, the accounting firm's economic benefit will be greater if the tax credits are maximized, a position that is

[185] AICPA SAS No. 22, AU § 311.04b and AUI § 9311.03.

inconsistent with an auditor who would have to act independently in assessing the accuracy of the impact on the income tax accounts and financial statements of the tax credits.

Rule 302 of the profession's ethics rules states that an AICPA member may not receive a contingent fee for the performance of any service. The AICPA Rule further states:

> [A] contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.[186]

Contingent fees are not specifically mentioned in our current regulations, though contingent fees are prohibited by the AICPA Rules.[187] In view of the increase in consulting activities and business relationships among accounting firms, their affiliates, and SEC registrants, however, we believe that it is advisable to state explicitly in the proposed rule that receiving contingent fees from an audit client impairs the auditor's independence.[188] Consistent with the AICPA Rule, however, our proposed definition of ''contingent fees,'' in proposed rule 2–01(f)(12), contains an exception for fees that are fixed by courts or by federal, state, or local governments.

We solicit comment on whether contingent fee arrangements impair, or would appear to reasonable investors to impair, an auditor's independence. Are there circumstances in which, or particular types of services for which, a contingent fee arrangement would not impair independence?

We also solicit comments on whether our proposed definition of contingent fees is adequate. For example, an auditor might charge an audit client fees for professional services priced significantly below market price with the expectation of higher fees in connection with or after a securities offering. Though these arrangements may involve no legal obligations between the parties, they could have the same effect. Should our definition of ''contingent fees'' include fees that are substantially below the fair market value of the services provided? Are there fee arrangements, such as commissions, that are not included within the proposed definition but that should be included because they would impair an auditor's independence? Should the exception for fees fixed by courts or public authorities be deleted?

F. Quality Controls

Paragraph (d) of the proposed rules establishes a limited exception for accounting firms that maintain certain quality controls and satisfy certain conditions. We are proposing this exception to encourage accounting firms to adopt internal quality controls that ensure the independence of the firm's auditors. In addition, we are proposing this section so that accounting firms that have appropriate controls will not be deemed to lack independence when the particular auditor did not know, and was reasonable in not knowing, the circumstances giving rise to the impairment.

Notwithstanding attempts to maintain independence, we recognize that situations may arise where an accountant's independence inadvertently becomes impaired. A covered person's independence may be impaired, for example, because his or her family member made an investment in an audit client and the covered person was not aware of the investment. We propose, therefore, that in certain situations an accounting firm's independence will not be impaired if: (i) The covered person did not know, and was reasonable in not knowing, the circumstances that gave rise to the lack of independence;[189] (ii) the covered person's lack of independence was corrected promptly after the covered person or the accounting firm became aware of it; and (iii) the accounting firm maintains a quality control system that provides reasonable assurance that the accounting firm and its employees do not lack independence.

The third condition for the exception—a quality control system—is the first line of defense to guard against independence impairments with respect to a client. We understand that accounting firms vary significantly in size and in the nature of their practices, and we propose that the quality controls that the firm establishes be tailored to the firm's size and practice.

Proposed rule 2–01(d)(3)(i)–(vii) describe the elements of a quality control system that large accounting firms that audit public companies must have in place to qualify for the limited exception.[190] Many of these elements are set forth in a 1999 letter from our staff to the SECPS.[191] In the letter, the staff noted that the requirements reflect procedures that many accounting firms are implementing or already following. While the proposed rules would require only large firms to incorporate these elements in their control systems to qualify for the limited exception, we encourage all firms to adopt them and note that, depending on firm size and the nature of its practice, some of these elements may be essential to a quality control system. We discuss those elements here.[192]

1. Written Independence Policies and Procedures

The largest firm's independence policies and procedures must be reduced to writing. We expect that the policies and procedures would be comprehensive and would cover all professionals in the accounting firm and

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[186] AICPA Code of Professional Conduct, ET § 302.01.

[187] Under our current Codification, however, a contingent fee might constitute a financial interest in an audit client. For example, Codification § 602.02.b.v. states in part:

> If fees for audit *and other professional services* are owed to an accountant for an extended period of time and become material in relation to the fee expected to be charged for a current audit, there may be a question concerning the accountant's independence with regard to the current audit because the accountant may appear to have a direct interest in the results of operations of the client. Generally, prior year audit *and other unpaid fees* should be paid before a current audit engagement is commenced in order for the accountant to be deemed independent with respect to the current audit. (Emphasis added.)

[188] The staff has become aware of an increasing number of situations where firms are sharing with their consulting clients the risk that the firm's advice will add value to the project or transaction. In such situations, the firms are paid through contingent fees or similar arrangements, or payments to the firm may be deferred until contemplated transactions occur or benefits from the project begin to be realized. If the consulting client is also an audit client, however, these payment mechanisms would be considered to be contingent fees and impair the firm's audit independence.

[189] The exception does not apply to situations where the covered person was aware of the circumstances but did not know that the circumstances impaired the covered person's independence.

[190] Under the proposed rule, these procedures apply to those firms that have as clients 500 or more companies that have a class of securities registered with us under Section 12 of the Exchange Act, 15 U.S.C. § 78*l*.

[191] *See* Letters from Lynn Turner to Michael Conway, *supra* note 70. The SECPS adopted independence quality control membership requirements in April 2000.

[192] The quality control policies and procedures would consist of policies and procedures for the accounting firm. Proposed rule 2–01(d)(3)(i). Under the proposed rules, the term accounting firm includes affiliates of the firm. Proposed rule 2–01(f)(2). The definition of affiliate of the accounting firm would include, among other things, all persons and entities with which the firm is publicly associated by co-branding or using the firm's name, initials, or logo. Proposed rule 2–01(f)(4)(E). One effect of this provision, therefore, is that the term accounting firm would include all of the firm's affiliates worldwide. We expect that the written policies and procedures, therefore, would apply to the firm and its affiliates worldwide. *See* Letters from Lynn Turner to Michael Conway, *supra* note 70.

address all aspects of independence, including financial, employment, and business relationships, and fee arrangements.

2. Automated Systems

Large firms must have automated systems to identify financial relationships that may impair independence. We expect that these systems would provide a reasonable basis for tracking audit clients and financial investments by firm professionals. We anticipate that large firms will employ a sophisticated electronic system updated on a regular basis that would allow employees to post their investments to the system, and that would maintain a list of employee holdings and check them against a current list of clients. We propose to require these systems track only financial relationships.

3. Training

Large firm quality controls also must include annual or ongoing firm-wide training about auditor independence. This training should be designed to raise awareness and understanding of the applicable rules. Each professional in a large accounting firm should be able to demonstrate a minimum level of competence with respect to professional standards, legal requirements, and firm policies and procedures.

4. Internal Inspection and Testing

An internal inspection and testing program to monitor adherence to independence requirements is an important part of quality controls. To qualify for the limited exception, large firms must monitor compliance by their firm, their firm partners and their firm professional employees with the applicable independence rules of the profession, standard setters, and other regulatory bodies. This would entail procedures to audit, on a test basis, the completeness and accuracy of information submitted by employees and partners, and information in a client investment database. We expect that firms would have policies, procedures, and controls to monitor the investments of the firm itself and its pension and retirement plans, and any business arrangements with firm clients. We encourage firms to monitor compliance with their own policies and procedures as well.

5. Notice of Names of Senior Management Responsible for Independence

We also propose to require, with respect to large firms, that all firm members, officers, directors, and employees be notified of the name and title of the member of senior management responsible for compliance with the independence requirements. This would require firms to assign responsibility to members of senior management for ensuring compliance with the independence rules.

6. Prompt Reporting of Employment Negotiations

A firm professional would not be independent if he or she were to audit a client while simultaneously negotiating employment with that client. The quality control system of a large firm, therefore, would contain written policies and procedures to require firm professionals to report promptly to the firm as soon as they begin employment negotiations with an audit client. The large firm also would have appropriate procedures in place to remove any such professional from that audit client's engagement immediately and to review that professional's work related to that client.

7. Disciplinary Mechanism

Finally, we propose to require that large firms' quality control systems also have a disciplinary mechanism for enforcement.

We request comment on whether these are the appropriate elements of an effective quality control system. Are there other quality controls that should be required? For example, are these quality controls sufficient to address all situations where the audit firm leases personnel? Under the proposed rules, these procedures apply to those firms that have as clients 500 or more companies registered with us under section 12 of the Exchange Act. Is 500 the appropriate number? Is there another test that we should use to determine which firms must adhere to these procedures to qualify for the exception? We request comment on whether these are the appropriate controls on which to condition the exception, or whether other conditions would be appropriate.

The Big 5 firms are comprised of both U.S. and foreign members. Should these quality controls apply to both U.S. and the foreign firms? Do the foreign firms require a transitional or phase-in period? Should the exception also be provided to a firm that has adopted the specified quality controls, but did not know and was reasonable in not knowing that a partner or employee lacked independence, and the lack of independence was cured promptly after the firm became aware of it? Should the term ''promptly'' be defined in terms of a period of time?

G. ''All Relevant Circumstances''

Proposed rule 2–01(e), reciting the standard currently found in current Rule 2–01(c), provides that we will look to all relevant circumstances in making independence determinations, including all relationships between the accountant and the audit client or its affiliates, and will not confine ourselves solely to the relationship between the audit client and the corporate entity whose name appears on the audit client's filing. Reasonable investors would consider all appropriate circumstances in evaluating an auditor's independence. Paragraph (e) of the proposed rule expresses this principle and makes clear that an independence determination cannot be based on an artificially limited set of the relevant facts.

We solicit comment on paragraph (e). Does paragraph (e) adequately capture the relevant circumstances for making an independence determination? Are there other considerations that should be expressly mentioned in this paragraph?

H. Proxy Disclosure Requirement

We are proposing to reinstate a proxy disclosure requirement. The proposed proxy disclosure requirement varies somewhat from the proxy disclosure requirement rescinded in 1982. Like the 1979–82 proxy disclosure requirement, the proposal would require companies to: (i) Describe specifically each professional service provided by its auditor, and (ii) indicate whether the company's audit committee or, where no such committee exists, board of directors approved the service and considered the effect that the provision of each disclosed service could have on the auditor's independence.[193] We are proposing to require disclosure of the specific non-audit services provided by an auditor to an audit client because we believe that an investor needs the information to form a judgment about independence. We also believe that investors will be aided by disclosure as to whether the audit committee or board of directors considered this issue: Among other things, this information will enable investors to make judgments about whether their interests have been adequately considered by the audit

[193] The O'Malley Panel has recommended that audit committees pre-approve non-audit services that exceed a threshold determined by the committee. This recommendation is consistent with the recommendations of the Blue Ribbon Committee regarding auditors' services. The Panel set forth factors for audit committees to consider in determining the appropriateness of a service. *See* O'Malley Report, *supra* note 183, at ch. 5, pp. 7–8.

committee or whether the investors should make further inquiry.

Unlike the earlier proxy disclosure requirement, the current proposal would require companies to disclose the fee paid for each non-audit service and the aggregate audit fee for the most recent fiscal year. Additional disclosures would be required only if a company's auditor leased or otherwise acquired from another entity the professionals it needed to perform a majority of the audit of the company's financial statements.

1. Disclosure of Fees

The proposal would generally require a company to disclose the fee paid for each non-audit service performed by its auditor and the fee charged for the annual audit. An exception to these general disclosure requirements is that issuers would not have to describe a non-audit service, nor disclose the fee for that service, if the fee was less than $50,000 or ten percent of the company's audit fee, whichever is smaller. We are proposing this exclusion to allow companies to avoid disclosure of *de minimis* items.

Earnscliffe asked respondents in its survey whether disclosure could potentially improve auditor independence. ''A fair number of [respondents] advocated a requirement of full disclosure as a way to both deter an unhealthy relationship between auditor and client, and to inform investors of any risks related thereto.'' [194] Like the respondents surveyed, we believe that disclosure could have a positive impact on auditor independence.

We note that, in this area, the United Kingdom has long required disclosure of annual audit fees, and since 1989, it has required disclosure of fees for non-audit services provided by their auditors. ''The [British] government believes that the publication of the existence of, and extent of, non-audit consultancy services provided to audit clients will enable shareholders, investors, and other parties to judge for themselves whether auditor independence is likely to be jeopardized.'' [195]

We request comment on whether the disclosure requirement will be useful to investors and enhance auditor independence. Will disclosure impede the ability of audit client's to obtain valuable non-audit services or have any negative affect? We also request comment on whether the disclosure regarding the approval of the audit committee should be made by the audit committee in its report under Item 306 of Regulation S–K. Is the information required to be disclosed appropriate or should other information be required? Should we require companies to disclose separately the fee paid for tax services? For example, should we require companies to disclose fees by a range in which they fall? Would the disclosure of audit and non-audit fees be more appropriate in Form 10–K (for example, for all companies or for those companies that are not required to prepare proxy statements or information statements) or footnotes to the financial statements, as done in the U.K.?

We further request comment on the exclusion for non-audit services that cost the lesser of $50,000 or ten percent of a company's annual audit fee. Should we set different levels for this *de minimis* exclusion? If so, what should these levels be? What is the appropriate scope of the exclusion? As proposed, the disclosure requirement applies only to the registrant. In the case of an investment company complex, should the rule extend beyond the registrant to require disclosure of all of the professional services that are provided to the investment company complex?

2. Leased Personnel

Under the proposal, a company would have to disclose if its principal auditor leased or otherwise acquired from another entity the personnel it needed to perform a majority of the audit of the company's financial statements. This disclosure requirement responds to the recent move by accounting firms to sell their non-audit practices to financial services companies. Often in these transactions, the partners and employees become employees of the financial services firm. The accounting firm in essence becomes a ''shell'' that then leases assets, namely professional auditors, back from those companies to complete audit engagements. In such an arrangement, audit professionals become full-or part-time employees of the financial services company, but work on audit engagements for their former accounting firm. They receive compensation from the financial services firm and in some situations from the accounting firm.[196] We believe that investors should be informed when individuals who have personal interests that may affect their objectivity are performing the bulk of the audit. [197]

We request comment on the proposal to require disclosure when the principal audit firm signing the audit opinion uses personnel from another entity to perform a majority of the work on the audit engagement.

I. Definitions

In this section of the release, we provide a more detailed explanation of those defined terms not discussed in the preceding sections. Proposed rule 2–01(f) provides definitions of certain terms used in rule 2–01. These definitions apply only to rule 2–01 and not to other sections of Regulation S–X. Rule 1–02 of Regulation S–X provides definitions of terms used in the remainder of Regulation S–X. Are the different scopes of the two sets of definitions sufficiently clear, or should we amend current Rule 1–02 to make it explicit?

1. ''Accountant''

Proposed rule 2–01(f)(1) defines the term ''accountant.'' The proposed rules are written in terms of an accountant's independence from the audit client. The definition of ''accountant'' set forth in Rule 2–01(f) includes the accounting firm in which the auditor practices and, accordingly, makes clear that an individual accountant's lack of independence may be attributed to the firm.

2. ''Accounting Firm''

Proposed rule 2–01(f)(2) is the first of several definitions that are used to describe the entities or groups whose actions may cause an accountant to lack independence. The ''accounting firm'' includes the organization (whether organized as a partnership, corporation, limited liability company, or otherwise) that is engaged in the practice of public accounting or furnishing accountant's reports with respect to financial statements, reports, or other documents filed with the Commission, and all of the firm's divisions, subsidiaries, and departments. The definition also includes all ''affiliates of the accounting firm,'' including its pension, retirement,

[194] Earnscliffe Report, *supra* note 10, at 33.

[195] Michael Firth, ''The Provision of Nonaudit Services by Accounting Firms to their Audit Clients,'' *Contemporary Accounting Research*, at 6 (Summer 1997). Firth hypothesized that companies with potentially high agency costs (*i.e.,* companies in which directors do not control management or which have a large amount of debt) would limit the non-audit services provided by their auditors because the appearance of a lack of auditor independence would increase their cost of capital. Firth's findings were consistent with his hypothesis.

[196] The ISB cites threats to independence arising from these structures and identifies quality controls to ensure the independence of the auditors in these situations. *See* ISB, ''Discussion Memorandum 99–2: Evolving Forms of Firm Structure and Organization,'' at 20 (Oct. 1999).

[197] AICPA SAS No. 1, AU § 543 also sets forth guidance on when a principal auditor discloses and makes reference to another auditor who performs an audit of a component of the entity.

investment, or similar plans. The definition of ''affiliate of the accounting firm'' is discussed below.

The ''accounting firm'' does not include individual partners or employees of the firm. For the purposes of these independence rules, we are proposing that a distinction be made between investments in which the ''accounting firm'' has the primary legal rights or obligations, and investments in which individual partners or employees have the primary legal rights or obligations.

3. ''Affiliate of the Accounting Firm''

Proposed rule 2–01(f)(4) defines ''affiliate of the accounting firm.'' [198] This definition attempts to capture those entities that are financially tied to or otherwise associated with the accounting firm enough to warrant being treated like the accounting firm for purposes of our independence requirements. While part of the definition draws on the definition of ''affiliate'' used in other areas of the securities laws, the definition is broader than those other provisions.

Proposed rule 2–01(f)(4)(i)(A) states that an ''affiliate of the accounting firm'' includes any person controlling, controlled by, or under common control with the firm, shareholders of more than five percent of the firm's voting securities (or similar interests entitling a person to vote), and entities five percent or more of whose securities (or similar interests entitling a person to vote) are owned by the firm. The rule also includes any officer, director, partner, or co-partner of any of the foregoing entities, or persons. This portion of the definition is based generally on the provisions in section 2(a)(3) of the ICA [199] and the definition of ''affiliate'' in Regulation S–X.[200]

Paragraphs (C) through (F) of proposed rule 2–01(f)(4)(i) describe those who are ''affiliates of the accounting firm'' because they are business partners of the accounting firm. In general, these include certain: (i) Joint ventures in which the accounting firm participates, (ii) entities that provide non-audit services to the accounting firm's audit clients and with which the accounting firm has certain financial interests or relationships, and (iii) entities involved in ''leasing'' professional services to the accounting firm for their audits. The definition also includes all other entities with which the accounting firm is publicly associated in certain ways.[201]

The category of joint ventures and partnerships takes into account recent changes in accounting firms' structures and alliances with third parties. It generally would attribute to the auditor actions and interests of certain entities in joint ventures or partnerships in which the parties agree to share revenues, ownership interests, appreciation, or certain other shared economic benefits. The category is based on the notion that such agreements create a mutuality of interest between the auditor and its partner or shareholder because the revenue or profits accruing to each party depend, to some degree, on the efforts of each. Their interests are wedded.[202] Accordingly, under the proposals, the business partner's relationships with or interests in the accounting firm's audit clients would be attributed to the auditor.

The definition of ''affiliate of an accounting firm'' also includes any entity that provides non-audit services to an audit client, if the accounting firm has an equity interest in, shares revenues with, loans money to, or if any covered person has certain direct business relationships with, the consulting entity. Under these circumstances, the actions and investments of the consulting entity are fairly attributed to the accounting firm because the accounting firm's interest in the consulting entity creates a mutuality of interest in the promotion and success of the entity's consulting projects.

The proposed definition of ''affiliate of the accounting firm'' also attributes to the auditor the actions and interests of persons ''co-branding'' or using the same (or substantially the same) name or logo, cross-selling services, or using co-management. Where the auditor has taken steps to identify itself publicly with another person, the auditor shares, and will be perceived to share, a mutuality of interest with that other person.

Would the relationships described in the preceding three paragraphs impair, or appear to reasonable investors to impair, an auditor's independence? Are there any that should be excluded from the definition of ''affiliate of the accounting firm'' for purposes of determining impairments to independence?

The proposed definition of ''affiliate of the accounting firm'' also addresses the situation where full- or part-time employees of an entity other than the firm signing the audit report perform a majority of the audit engagement. The proposal provides that if an auditor ''leases'' personnel from an entity to perform audit procedures or prepare reports to be filed with the Commission, and the ''leased'' personnel perform a majority of the hours worked on the engagement, then the actions and interests of the ''lessor,'' the lessor's board of directors, executive officers, persons with responsibility for management, quality control, or technical supervision over the leased personnel, and shareholders of five percent or more of the lessor's securities, are attributed to the audit firm. In these situations, we believe that this proposal strikes a balance between those entities and persons who reasonably could influence the auditor and the audit process, and those who may be associated with the lessor but have no real or perceived ability to influence the audit.

Would the relationships described in the preceding paragraph impair, or appear to reasonable investors to impair, an auditor's independence? Does the answer depend upon the percentage of the hours worked on the engagement that are attributable to leased personnel? If so, where should the line be drawn and why?

Finally, the proposed definition of ''affiliate of the accounting firm'' excludes persons whose sole business relationship with an accounting firm is to share certain services or facilities, such as a joint training facility or billing office, so long as neither the auditor nor the other person profits from the shared services. The latter restriction is necessary to assure that the auditor and audit client have not joined together in a profit-seeking venture.

We seek comment on the proposed definition of ''affiliates of an accounting firm.'' Should persons or entities other

[198] As noted above, the definitions used in the rest of Regulation S–X, including the definition of ''affiliate,'' would not apply to proposed Rule 2–01.

[199] 15 U.S.C. § 80a–2(a)(3).

[200] 17 CFR 210.1–02(b).

whether all investments and relationships of an affiliate of an accounting firm, as described in the preceding paragraph should be attributed to the audit firm for purposes of evaluating its independence from its audit clients. Should the answer depend upon the percentage of the accounting firm's securities (or similar voting interests) that the affiliate owns? If the latter, at what percentage of ownership should we draw the line beyond which independence is impaired, and, accordingly, draw the line by which we define ''affiliate of the accounting firm?'' If the ''affiliate'' holding the ownership interest is an entity, should the definition of ''affiliate of the accounting firm'' also include any officer, director, partner, co-partner or shareholder of more than five percent of the voting securities of that entity? Does the proposed definition identify all persons that should be considered affiliates for purposes of determining impairments to independence?

[201] There is also an exception from the definition of ''affiliate of the accounting firm'' for certain persons or entities with which the accounting firm shares services, such as training or billing facilities. Proposed rule 2–01(f)(4)(ii).

[202] *See generally*, Letter from Jonathan G. Katz to Duane R. Kullberg, supra note 40, at 4.

than those identified in the proposed rule be included as affiliates?

4. ''Affiliate of the Audit Client''

Proposed rule 2–01(f)(5) defines ''affiliate of an audit client'' as any entity that has ''significant influence'' over the audit client, or any entity over which the audit client has significant influence. The definition thus makes clear that it covers both ''upstream'' and ''downstream'' affiliates of the audit client, including the audit client's corporate parent and subsidiary.

We use the term ''significant influence'' in the definition to signal that the ''affiliates of an audit client'' should be determined in light of the principles in Accounting Principles Board (''APB'') Opinion No. 18.[203] APB No. 18 clarifies the term ''significant influence.'' This accounting literature recognizes that ''significant influence'' can be exercised in several ways: representation on the board of directors; participation in key policy decisions; material inter-company transactions; interchange of personnel; or other means. APB No. 18 also recognizes that an important consideration is the extent of the equity investment, particularly in relation to the concentration of other investments. In order to provide a reasonable degree of uniformity in application of this standard, the Board concluded that,

> [A]n investment (direct or indirect) of 20% or more of the voting stock of an investee should lead to a presumption that in the absence of evidence to the contrary an investor has the ability to exercise significant influence over an investee. Conversely, an investment of less than 20% of the voting stock of an investee should lead to a presumption that an investor does not have the ability to exercise significant influence unless such ability can be demonstrated.[204]

We believe that the ''significant influence'' test is appropriate because it results in the marriage of financial information between the audit client and the entity influenced by, or influencing, the financial or operating policies of the audit client, including those over which the audit client has control or that control the audit client. Should we, however, consider a different definition of an ''affiliate of an audit client?'' What other test would be appropriate? Rather than using a test that sets a presumption of influence at an equity investment of 20%, is a different investment threshold more appropriate? Should it be higher or lower, and why?

[203] APB Opinion No. 18, ''The Equity Method of Accounting for Investments in Common Stock'' (Mar. 1971).

[204] *Id.*¶ 17.

5. ''Audit and Professional Engagement Period''

The proposed definition of ''audit and professional engagement period'' uses language from current Rule 2–01(b) and indicates that the auditor must be independent during the period covered by any financial statements being audited or reviewed (the ''audit period''), and during the period that the auditor is engaged either to review or audit financial statements or to prepare a report (the ''professional engagement period''). The proposed definition also provides that the ''professional engagement period'' begins when the auditor signs the initial engagement letter or begins review or audit procedures, whichever is earlier, and ends when the registrant or the accountant notifies the Commission that the registrant is no longer the accountant's audit client.

The proposed definition makes clear that we agree with the ''auditor of record'' notion described in AICPA Ethics Ruling 101–1. That ruling states:

> The period of a professional engagement starts when the [AICPA] member begins to perform any professional services requiring independence for an enterprise, lasts for the entire duration of the professional relationship, which could cover many periods, and ends with the formal or informal notification of the termination of the professional relationship either by the member, by the enterprise, or by the issuance of a report, whichever is later. Accordingly, the professional engagement does not end with the issuance of a report and recommence with the signing of the following year's engagement.[205]

We solicit comment on the proposed definition. Does the proposed definition cover the appropriate period? Is the definition appropriate for all situations in which the professional engagement ends or do we need to provide an alternative definition for some types of registrants, such as foreign private issuers, or for certain types of engagements? Could this portion of the definition be made more specific by referring to Form 8–K or other Commission filings?

6. ''Audit Client''

The term ''audit client'' is defined in proposed rule 2–01(f)(7) as the entity whose financial statements or other information is being audited, reviewed, or attested. This is how ''audit client'' is commonly used. Use of the term ''audit client'' in this rule in no way changes our position that the auditor ''owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public.'' [206]

[205] AICPA Code of Professional Conduct, ET§ 101.02.

7. ''Audit Engagement Team''

Proposed rule 2–01(f)(8) defines the term ''audit engagement team.'' The ''audit engagement team'' includes the people in the accounting firm that are obviously in a position to influence the audit. Members of the ''audit engagement team'' are included within the category of ''covered persons in the firm,'' which is the term used to indicate the persons in the firm subject to a number of the specific rules in paragraph (c) of proposed rule 2–01.

The ''audit engagement team'' includes all partners, principals, shareholders, and professional employees participating in an audit, review, or attestation engagement of an audit client, including those conducting concurring or second partner reviews, and all persons who consult, formally or informally, with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

We solicit comment on this definition. Should any other persons be included on the audit engagement team? Should any of the persons included on the audit engagement team not be included?

Could the definition's inclusion of persons consulted on an audit create a disincentive for an auditor to seek, or for others to provide, assistance on an audit, and thereby adversely affect the quality of the audit? Is there a realistic possibility that auditors will be impeded significantly in their efforts to secure expert consulting assistance because experts would have to terminate any interest in the audit client before consulting? For example, XYZ Corp is an audit client of ABC Accounting Firm. Industry Expert A, who is not otherwise a covered person in the firm with respect to XYZ Corp, holds an investment in XYZ Corp. Accountant B, who is a covered person, seeks the advice of Industry Expert A. A declines to offer advice because liquidation of the investment would create adverse tax consequences. In situations like this, are there likely to be other industry experts in the firm without investments in the audit client that the accountant could consult? Should the definition of covered persons be limited to assure that all appropriate expertise is available for every audit engagement?

[206] *Arthur Young, supra* note 19, at 818.

8. ''Chain of Command''

Proposed rule 2–01(f)(9) defines the term ''chain of command.'' This term is defined broadly to refer to the group of people in the accounting firm who, while not directly on the audit engagement team, are capable of influencing the audit process either through their oversight of the audit itself or through their influence over the members of the audit engagement team. Like the ''audit engagement team,'' persons in the ''chain of command'' are included as ''covered persons in the firm,'' and therefore are subject to a number of the specific rules in paragraph (c) of proposed rule 2–01.

Under the proposed definition, the ''chain of command'' includes all persons having any supervisory, management, quality control, compensation, or other oversight responsibility over either any member of the audit engagement team or over the conduct of the audit. It also includes all partners and managers who may review, determine, or influence the performance appraisal or compensation of any member of the audit engagement team and any other person in a position to influence the audit engagement team's decisions during the conduct of the audit, review, or attestation engagement.

We solicit comment on the definition. Should additional persons be included in the chain of command? Should prominent partners, principals or shareholders in the firm, such as a chairman, CEO, member of the governance board, office managing partner or managing partner of the national technical office always be considered to be in the chain of command? Should any of the persons included in the chain of command not be included? Specifically, is it appropriate to include managers in this group? Is the definition capable of being consistently applied under different accounting firms' management structures?

9. ''Close Family Members''

Proposed rule 2–01(f)(10) defines ''close family members'' to mean a person's spouse, spousal equivalent, parent, dependent, nondependent child, and sibling. These terms should be understood in terms of contemporary family relationships. Accordingly, ''spouse'' means a husband or wife, whether by marriage or under common law; ''spousal equivalent'' means a cohabitant occupying a relationship generally equivalent to that of a spouse; ''parent'' means any biological, adoptive, or step parent; ''dependent'' means any person who received more than half of his or her support for the most recent calendar year from the relevant covered person; ''child'' means any person recognized by law as a child or step-child; and ''sibling'' means any person who has the same mother or father.

''Close family members'' includes the persons separately defined as ''immediate family members'' (spouse, spousal equivalent, and dependent), and adds certain family members who may, as a general matter, be thought to have less regular, but not necessarily less close, contact with the covered person in question (parent, nondependent child, and sibling). One of our reasons for distinguishing the two groups is that the less immediate the family relationship to the covered person, the more substantial that family member's relationship to the audit client should be before we deem it to impair the auditor's independence.

We considered whether we should follow this approach further and further into a covered person's family, making impairment depend upon increasingly substantial relationships to the audit client the further removed the family member is from the covered person. The proposed definition of ''close family members,'' for example, does not include in-laws.

We solicit comment on the proposed definition of ''close family members.'' Should the definition include family members in addition to those proposed? Is the proposed definition too inclusive? Should we adopt some type of formula that would reach family members who are further removed from the covered person if those family members have substantial enough relationships to the audit client? How would such a formula work? Instead, are these situations appropriately handled under the general standards of paragraphs (b) and (c)(2) of the rule?

10. ''Covered Persons in the Firm''

Proposed rule 2–01(f)(13) defines the term ''covered persons in the firm.'' The term includes four basic groups: (i) The ''audit engagement team;'' (ii) the audit engagement team's ''chain of command;'' (iii) any other professional employee of the accounting firm who is, or during the audit client's most recent fiscal year was, involved in providing any professional service to the audit client, its parents, subsidiaries, or other affiliates; and (iv) all other professional employees from an ''office'' of the accounting firm that participates in a significant portion of the audit.

The ''audit engagement team'' and the ''chain of command'' are discussed above. We have also included as ''covered persons in the firm'' those professionals who provide consulting and non-audit services to the audit client. We did so because the auditing literature, quite appropriately, directs the audit engagement team to discuss certain matters with the firm personnel responsible for providing such services to that client. [207]

We have also included as ''covered persons in the firm'' all other professional employees from an ''office'' of the accounting firm that participates in a significant portion of the audit. (The definition of ''office'' is separately discussed below.) We included these people because we believe they are generally in a position to influence the audit. They are the ones most likely to interact with the audit engagement team on substantive matters and to exert influence over the audit engagement team by virtue of their physical proximity to, or relatively frequent contact with, the audit engagement team.

Nevertheless, under the proposal, an accounting firm employee in a distant part of the world, or even down the street, could own an audit client's securities, have a family member in a financial position at the client, or enter into a business relationship with a client without necessarily impairing the firm's independence from the audit client. We expect that many partners and employees who previously could not own securities issued by an audit client will be able to do so under the proposed rule. It should be noted that insider trading restrictions prohibit any partner, principal, shareholder, or employee of the firm, whether or not he or she performs any service for the client, from trading on any nonpublic information about that client. [208]

We believe that the lines drawn in the proposed rule provide a reasonable balance between those who may and those who may not be able to influence the audit process for a particular client. In general, all those who may have a connection with, or directly or indirectly influence, the audit have been included.

We solicit comment on the definition of ''covered persons in the firm.'' Are there other persons in the firm who should be included, such as all partners? Are there persons included in the definition who should not be

[207] AICPA SAS No. 22, *supra* note 185.

[208] *See* ''Selective Disclosure and Insider Trading,'' Securities Act Rel. No. 7787 (Dec. 20, 1999). As discussed in footnote 109 of that release, an individual working at an accounting firm may be liable for insider trading for misappropriating information about a client, even if he or she did not perform services for that client.

included? Is the concept of a ''significant portion of the audit'' sufficiently familiar to accountants to be a useful standard?

A person who is not a covered person at the time an audit engagement begins may be consulted about the audit as the engagement progresses. Once consulted, that person becomes a member of the audit engagement team and, therefore, a covered person in the firm. That person must dispose of any financial interest in the audit client completely and irrevocably before participating in any discussion with another covered person concerning the audit engagement. The proposal would not allow the person consulted to participate in a discussion about the audit engagement and then ''cure'' an independence impairment by later disposing of his or her financial interest in the audit client.

Likewise, a person may become a covered person by rotating on to an engagement or being promoted into the chain of command. In these situations, the person must also dispose of any financial interest in the audit client completely and irrevocably before becoming a covered person.

11. ''Immediate Family Members''

Proposed rule 2–01(f)(15) defines ''immediate family members'' to mean a person's spouse, spousal equivalent, and dependent. These terms have the same meaning as they do in the definition of ''close family members.''

''Immediate family members'' is a narrower group than ''close family members.'' Again, part of our premise in distinguishing the two groups is that the less immediate the family relationship to the covered person, the more substantial that family member's relationship to the audit client should be before we deem it to impair the auditor's independence. By circumscribing the group of ''immediately family members,'' we mean to identify those persons who have such regular and close contact with a ''covered person,'' that it is fair, for independence purposes, to attribute to the covered person any financial and employment relationships that family member has with the audit client.

We solicit comments on the definition of ''immediate family members.'' Should the definition include family members in addition to those proposed? Is the proposed definition too inclusive? Are there any qualifications that should be added to the definition, such as not including spouses who are separated from, and living apart from, the covered person?

12. ''Investment Company Complex''

Proposed rule 2–01(f)(16) provides a definition of ''investment company complex'' that is loosely based on ISB Standard No. 2. ISB Standard No. 2 defines ''mutual fund complex'' to mean ''[t]he mutual fund operation in its entirety, including all the funds, plus the sponsor, its ultimate parent company, and their subsidiaries.'' [209]

Our proposed rule defines ''investment company complex'' to include an investment company and its investment adviser, or if the company is a unit investment trust, its sponsor; any entity controlled by, under common control with, or controlling the investment adviser or sponsor of a unit investment trust, such as a distributor, fund administrator, or transfer agent; and any investment company or an entity that would be an investment company but for the exclusions provided by section 3(c) of the ICA and that is advised by the investment adviser or sponsored by the sponsor, or an entity that is controlled by, under common control with, or controlling the investment adviser or sponsor. The definition does not include sub-advisers whose role is primarily portfolio management and who provides services pursuant to a subcontract with, or are overseen by, an adviser in the complex. As proposed, an auditor generally would not be precluded from investing in other investment companies advised by an investment company audit client's sub-adviser. We request comment on whether the auditor of an investment company should be independent of other investment companies that have an adviser that is the sub-adviser of an audit client investment company. Sub-advisers are excluded only when their duties are limited to portfolio management. Should they be excluded only in this circumstance? Is the definition of sub-adviser clear and capable of implementation, or is another definition preferable?

As proposed, the definition would require an auditor to be independent of all companies that would be investment companies but for the exclusions set forth in section 3(c) of the ICA. Should the auditor of an investment company be independent of all investment type products (*i.e.,* hedge funds, venture capital funds, commodity pools, real-estate pools) offered by the adviser or sponsor of the investment company?

The rule would preclude auditors of a unit investment trust from investing in other investment companies sponsored by the sponsor of the unit investment trust and any other entity in the same investment company complex. We have defined sponsor as the entity that establishes the unit investment trust. Is such a definition sufficiently clear and capable of implementation? If not, how should it be modified so as to be sufficiently clear?

We solicit comment on the proposed definition of ''investment company complex.'' Does the definition include all entities that should be within the investment company complex? Does the definition include any entities that should not be included? For example, under the proposed rule, we focus on the integral role of an investment adviser in the investment company complex. But, for some fund groups, the principal underwriter or administrator plays a predominant role in organizing and managing the overall operations of the investment companies in the investment company complex. Should the auditors be independent of the administrator or principal underwriter? Should the auditors be independent of other fund groups who use the same principal underwriter or administrator?

13. ''Office''

Proposed rule 2–01(f)(17) defines ''office'' to mean a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines. The term ''office'' is used in the rule to help delimit the persons who are considered ''covered persons'' and, therefore, plays a role in identifying those firm personnel who cannot have financial or employment relationships with a particular audit client or affiliate of an audit client without impairing the firm's independence.

We give ''office'' a meaning that does more than merely refer to a distinct physical location where the firm's personnel work. By ''office'' we mean to encompass any reasonably distinct sub-group within an accounting firm, whether constituted by formal organization or informal practice, where the personnel who make up the sub-group generally serve the same clients, work on the same matters, or work on the same categories of matters. In this sense, ''office'' may transcend physical boundaries, and it is possible that a firm may have a sub-group that constitutes an ''office'' even though the personnel making up that sub-group are stationed at various places around the country or the world.

At the same time, we intend for ''office'' also to include reference to a physical location. For this reason, ''office'' will generally include a distinct physical location where the firm's

[209] ISB Standard No. 2, *supra* note 139.

personnel work. We recognize, however, that in some cases thousands of firm personnel may work at a single, large physical location, but physical divisions may nonetheless effectively isolate different sub-groups of personnel from each other in ways that will warrant treating each sub-group as a separate ''office'' under the proposed definition.

We solicit comments on the proposed definition of ''office.'' Does the definition provide a useful framework for identifying firm personnel who reasonably should be included within the definition of ''covered persons?'' Is there an alternative definition that would better serve the objective of identifying persons firm-wide whose geographic or professional proximity to the firm's work for a particular audit client suggests that their financial or employment relationships with that audit client should be deemed to impair the firm's independence? Should ''office'' be defined more narrowly, such as by limiting it to persons who work in the same physical location? To the extent that the definition does include physical location, should ''office'' be defined more strictly, by providing that all firm personnel working at the same physical or geographic location will, in all cases, constitute a single office?

J. Codification

As previously discussed, the Commission's current auditor independence requirements are found in various rules and interpretations. Section 600 of the Codification provides interpretations and guidance not otherwise available in the current rule. The proposed rule attempts to articulate clearly situations and circumstances, such as financial relationships, employment relationships, and non-audit services that impair auditor independence. Accordingly, we are proposing to delete interpretations included in the Codification that are reflected in, or that have been superseded by, the proposed rule.[210] The current Codification contains background information and interpretations that may continue to be useful in situations not specifically or definitively addressed in the proposed rule. Examples of these items concern business relationships, unpaid prior professional fees, indemnification by clients, and litigation.

Should the background information and other relevant items included in the Codification be maintained in their current form? Are there additional items that should be modified? Are there items that are proposed to be deleted but should be maintained in the Codification?

IV. General Request for Comments

We request comment on the proposals, other matters that may have an impact on the proposals, and your suggestions for additional changes. In addition, in considering whether to adopt rule amendments on auditor independence, the Commission will consider what effect, if any, its actions might have on the states and on state law. Specifically, the Commission will consider whether the rule amendments (i) could alter the relationships between federal and other authorities, (ii) require expenditures by state officials, or (iii) preempt state or local law. The Commission's rules affect only those auditors that perform audits for companies required to file financial statements and auditors' reports with the Commission, whereas state regulations often affect a much broader category of auditors and companies.

The Commission's proposals are not intended to alter the relationship between federal and state authorities. In general, states have patterned their regulations after those of the AICPA or the National Association of State Boards of Accountancy. Many state independence regulations may be more permissive, in some respects, than the Commission's current regulations. These differences would continue under the proposals. The proposals do not require state officials to undertake licensing regimes or otherwise make any financial outlays. Furthermore, our proposals would not affect the ability of the states to adopt different regulation in those areas they currently regulate. We solicit comment on whether the proposals would affect specific state laws or require any expenditures by state officials. We also request comment on whether or how these proposals would alter the relationship between federal and state authorities.

V. Cost-Benefit Analysis

We have identified certain costs and benefits of the proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of the proposed amendments. We encourage commenters to identify or supply relevant data concerning the costs or benefits of the proposed amendments.

A. Costs and Benefits of the Proposals Regarding Investments in and Employment Relationships With Audit Clients

The proposals clarify and, in some cases, eliminate, certain existing regulations under which an accountant's independence is impaired by fellow accounting firm employees or their family members having an investment in or holding a position at an audit client. As explained above,[211] changes in business practices and demographics, including an increase in dual-career families, may warrant a change in our auditor independence requirements to prevent them from unnecessarily restricting the employment and investment opportunities available to auditors and members of their families. To this end, the proposals take a more targeted approach and focus on those persons who are involved in or can influence an audit. In addition, the proposals create a limited exception for accounting firms that have quality controls that provide reasonable assurance of independence.

1. Benefits

We believe that our proposals on investment and employment restrictions provide several benefits. Eliminating certain investment and employment restrictions should benefit auditors and their families by permitting them a wider range of investment and employment opportunities. Currently, according to annual reports filed by accounting firms with the SECPS, the five largest audit firms employ approximately 115,000 professionals. Other public accounting firms that audit SEC registrants employ an estimated 5,000 to 25,000 professional staff. Our proposals would benefit these 120,000 to 140,000 accounting firm professional employees and their families by enabling them to invest in some public companies that, under the current rules, they cannot invest in without impairing the independence of the companies' auditors. In addition, under the proposals, unlike under current rules, family members of some audit firm employees could be employed by audit clients and their affiliates without impairing auditor independence.

Expanding the set of investment opportunities available to auditors and their family members may increase the return they can earn on their investments and improve their ability to reduce risk through diversification. Similarly, expanding the set of employment opportunities available to

[210] The Codification in its entirety remains in effect until any final rule is adopted.

[211] *See supra* Section II.

the family members of audit firm employees has the potential to increase their compensation. Finally, opening up the employment opportunities available to auditors and their family members increases their freedom of choice with respect to employment opportunities. This could improve the non-pecuniary, as well as financial, benefits of employment.

We request comment on the estimate of the number of individuals who are likely to benefit from the proposed amendments. Is a better estimate available? Is it possible to estimate the annual benefits to these individuals from having a wider range of investment choices? Is it possible to estimate the benefits that these individuals may achieve on an annual basis because of a wider range of employment choices? Would eliminating investment and employment regulations provide other benefits to these individuals? Are there other individuals who would benefit from the proposals regarding investment and employment relationships?

In addition to eliminating certain restrictions, the proposals clarify the independence requirements. Currently, these requirements are found in various Commission rules, Commission interpretations, staff letters and staff reports. The proposals consolidate the requirements. As a result, the proposals should provide clearer guidance to accountants and their families, issuers and their audit committees, regulators, courts, administrative law judges, and others. The proposals also put this guidance in an easily accessible format that should save these parties costs in ascertaining and complying with the regulations. Is it possible to quantify these benefits? Would additional parties be affected by the proposed clarification of our investment and employment restrictions?

Finally, the proposals encourage, but do not require, accounting firms to establish quality control systems that provide reasonable assurance that they are complying with our auditor independence requirements. The proposals do so by providing that an accounting firm's independence will not be impaired solely because one of its employees does not comply with the independence rules if, among other things, the firm has adequate independence quality controls in place.

GAAS already requires firms to have quality controls for their audit practices and refers auditors to the ''Statements on Quality Control Standards'' (''SQCS'') for guidance regarding the elements of those systems.[212] SQCS No. 2 states that firms' controls should provide ''reasonable assurance that personnel maintain independence (in fact and in appearance) in all required circumstances, perform all professional responsibilities with integrity, and maintain objectivity in discharging professional responsibilities.'' [213] In addition to requirements imposed by GAAS, public accounting firms that are SECPS members must comply with independence quality control membership requirements. Among other things, member firms with at least 7,500 professionals must implement an electronic tracking system by no later than December 31, 2000.[214] Our proposals, therefore, do not impose, even indirectly, a requirement for internal controls that does not already exist under GAAS and SECPS membership requirements.

The proposals, however, do clarify the GAAS requirement for firms with more than 500 SEC registrants as audit clients by identifying procedures that should be part of their quality control systems.[215] This aspect of the proposals could benefit the largest public accounting firms by reducing uncertainty about the required minimum characteristics of any quality control system they institute.

In addition, any public accounting firm implementing a quality control system in compliance with this limited exception should benefit because we would be narrowing the circumstances in which independence would be impaired. This aspect of the proposals also should provide investors with the assurance of improved quality control systems of any firms that implement them, and inform investors and others who rely on audited financial statements about the minimum characteristics of the quality control systems maintained by these accounting firms. This should reduce uncertainty among investors and increase investor confidence.

What methods are available to estimate the benefits that these accounting firms would receive from the limited exception and the reduced uncertainty about the minimum characteristics required for quality control systems? What methods are available to estimate the benefits to investors and others because of enhanced assurance that firms possess quality controls with minimum characteristics described in this section? Are there other benefits arising from the proposed amendment?

We request comment, including supporting data if available, on the benefits of the proposals regarding investment and employment relationships.

2. Costs

Modification of our investment and employment restrictions may require accounting firms, their employees, or others to incur transaction costs, such as one-time costs to modify existing systems that monitor investments and employment relationships, and training costs to make all professional staff aware of the revised rules. Is it possible to estimate these costs? Are there additional costs that would be borne by any individual or entity other than those identified?

As discussed above, the proposals provide an incentive—namely a limited exception from the auditor independence requirements—for accounting firms to establish quality controls. In the case of the largest firms, the proposals specify what we believe to be the minimum characteristics of these systems.[216] For the largest firms, implementing such a quality control system would likely entail costs to enhance or alter the firm's existing system. Because seeking the limited exception is elective, such costs will be assumed voluntarily, if at all, by accounting firms that decide that the benefits of this limited exception outweigh the cost of any incremental changes that are necessary to make their quality control systems meet the proposals' standards.

In addition, to minimize costs, we have tailored these quality control proposals in recognition of current industry requirements and practices. As noted above, under GAAS and, where applicable, under SECPS membership requirements, accounting firms must have a system of quality controls, including policies and procedures, to

[212] AICPA SAS No. 25, AU § 161, n. 1.

[213] AICPA Professional Standards: SQCS, QC § 20.09.

[214] Letter from Michael A. Conway, Chairman, Executive Committee, SECPS, to the Managing Partners of SECPS Member Firms, dated April 2000 (available at www.aicpa.org).

[215] The specified criteria for a quality control system only apply to the largest accounting firms. For other firms, the proposal states that a firm's quality control system should take into account the size and nature of the firm's practice. Again, this is in general conformity with GAAS, which states, ''The nature and extent of a firm's quality control policies and procedures depend on factors such as its size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations.'' AICPA SAS 25, AU § 161.02.

[216] Other public accounting firms would have the flexibility to adopt a system to comply with the proposed requirement in light of the nature and size of their practice.

provide the firm with reasonable assurance that personnel maintain independence in all required circumstances.[217] Moreover, it is prudent business practice to maintain reasonable quality controls.[218] An accounting firm that chooses to upgrade its existing quality control system to comply with the limited exception should incur only the incremental costs of implementing any improvements beyond what is required by GAAS and SECPS membership requirements.

We seek comment, and supporting data if available, on these and any other costs of our investment and employment proposals, including the quality control proposals. Is it possible to quantify the initial costs accounting firms may incur to modify their quality control systems? Is it possible to quantify the incremental costs that may be incurred by the largest accounting firms that choose to put in place a quality control system that meets the specified criteria?

B. Costs and Benefits of Restricting Certain Non-Audit Services

As more fully described above,[219] there is increasing concern that the growth of non-audit services provided to audit clients affects the independence of auditors. If investors lose confidence in auditors' ability or willingness to provide an unbiased and impartial examination of companies' financial statements, then investors' trust in the reliability of publicly available financial information, and in the integrity of the securities markets, may be damaged.

Currently, accounting firms may not provide certain services to their audit clients without impairing their independence. Our proposals extend and clarify those restrictions by setting forth four basic principles that should be used to evaluate the effect of non-audit services on an auditor's independence, and by designating certain non-audit services that, if performed by an auditor for an SEC registrant that is an audit client, impair the auditor's independence.

Our proposals on the provision of non-audit services may affect four distinct groups: investors, issuers, public accounting firms, and other potential providers of non-audit services. The benefits and costs arising from the proposed amendments are examined for each group.

1. Benefits

(a) *Investors.* For the reasons explained above, the Commission believes that the proposals will enhance auditor independence and thereby enhance the reliability and credibility of financial statements of public companies.[220] We expect these benefits to inure primarily to investors who, if the proposals are adopted, should be able to review public companies' financial statements with greater assurance that reliance on the statements will lead to more informed investment decisions. We seek comment on whether it is possible to quantify the benefits of the proposals to investors, and if so, how.

(b) *Issuers.* Issuers may benefit from the proposed scope of services regulations in several respects. First, the proposals eliminate certain uncertainties as to when a registrant's auditor will not be recognized as independent. The proposals eliminate these uncertainties by setting forth not only four general principles by which to analyze non-audit services, but also by listing certain non-audit services as incompatible with the concept of auditor independence. Accordingly, in the future, issuers can know that if their auditor provides any of the listed services, the auditor will not be independent for purposes of Commission filings.

Second, if the proposals increase investor confidence in financial reporting and thereby encourage investment, they may facilitate capital formation. In such a scenario, issuers would be able to attract capital at lower rates of return, or in circumstances in which they currently cannot raise capital.

Finally, the proposals may increase the utility of annual audits to issuers. For example, by requiring issuers to obtain certain information technology services, such as implementation of an accounting information system that is used to generate data significant to the financial statements as a whole, from a vendor other than their auditor, the proposals should result in someone other than the non-audit services provider reviewing that system during the course of the audit. As a result, issuers may get an independent ''second opinion'' of the system from the audit. Furthermore, as a result of the proposals, issuers may avoid pressure from their auditors to purchase non-audit services.

(c) *Other Consulting Firms.* Consulting firms that do not engage in public accounting also may benefit from the proposals. Such consulting firms may receive revenue from certain consulting engagements that, but for our proposals, would have gone to the client's auditor. Moreover, to the extent that a registrant's auditor has advantages in competing to provide consulting services to an audit client by virtue of the auditor's personal relationships with officers of the audit client or increased awareness of potential consulting engagements through proximity to an audit client, our proposals may improve competition in the market for the provision of consulting services. This improved competition could benefit any consulting firm with comparative advantages in providing the necessary non-audit services.[221]

(d) *Public Accounting Firms.* We anticipate that the proposals will confer two primary benefits on public accounting firms. First, the proposals should clarify what non-audit services may be provided to an audit client without jeopardizing auditor independence. Second, the proposals could improve competition in the market for the provision of non-audit services by public accounting firms. Because the restrictions on providing non-audit services to an audit client would apply equally to all accounting firms, the overall impact of the proposed restrictions may be to re-distribute the restricted non-audit services among the public accounting firms.[222]

In addition, as noted above, a registrant's auditor may have advantages in competing to provide non-audit services to its audit client that are not based on the auditor's skill or cost advantages in providing that service. To the extent that such advantages exist, the proposals may improve competition in the market for non-audit services. If a public accounting firm has a comparative skill or cost advantage in providing a particular non-audit service, that public accounting firm may benefit from any enhanced competition because its comparative advantage over other public accounting firms in providing that service would be more likely to lead to non-audit assignments from other public accounting firms' audit clients. Might these enhancements to

[217] AICPA SQCS, QC § 20; AICPA SAS No. 25, AU § 161.

[218] Some firms are already developing or improving quality control systems. At least one Big 5 accounting firm has begun the process of installing a computerized tracking system that monitors employee investments. *See* Elizabeth MacDonald, ''Top Accounting Industry Group Sets Conflict-of-Interest Compliance Rules,'' Wall St. J., Feb. 2, 2000, at B2.

[219] *See supra* Section II.C.

[220] *See supra* Section III.D.1.

[221] This would also benefit the issuers that contract for these non-audit services.

[222] As noted above, some of this work may be re-distributed to consulting firms that do not engage in public accounting.

competition change the way accounting firms invest in various of their service lines? For example, might accounting firms begin to re-invest more heavily in their audit function?

We request comment, including supporting data, on the benefits of the proposals.

2. Costs

Our proposals on non-audit services may impose costs on issuers and public accounting firms. We request comment on whether these proposals may impose costs on other groups.

(a) *Issuers.* The proposed amendments have the effect of restricting issuers from purchasing certain non-audit services from their auditors. Currently, the five largest public accounting firms audit approximately 12,800 public companies. Other public accounting firms audit approximately 3,900 public companies. According to reports filed with the AICPA, of the 12,800 public companies audited by the so-called ''Big 5,'' approximately 9,500 did not purchase any consulting services from their auditor in the most recently reported year. Of the approximately 3,900 registrants that are audited by other public accounting firms, approximately 3,100 did not purchase any consulting services from their auditor.

For the 12,600 registrants that did not purchase any consulting services from their auditor, the proposed amendments would not have affected their purchase of non-audit services in the most recently reported year. In the future, however, these registrants could be affected by the proposals insofar as the proposals reduce their flexibility in the purchase of non-audit services.

Of the approximately 4,100 registrants that were reported to have purchased non-audit services from their auditor, many may have purchased non-audit services that are not covered by the proposals. In the future, these issuers could continue to procure the same services from their auditor.

Issuers that purchased from their auditor non-audit services that are covered by the proposals, however, will have to look to other professional services firms, including other public accounting firms, to provide these services in the future. The fact that many issuers currently purchase non-audit services from firms other than their auditor suggests that there is a competitive market for non-audit services. Therefore, issuers who are precluded by the proposals from purchasing such services from their auditor likely will be able to purchase these services from other vendors. These issuers may incur costs from having to use a separate vendor, including the possible loss of any synergistic benefits of having a single provider of both audit and non-audit services. For example, they may incur costs locating a new vendor and developing a business relationship with that vendor.

We request comment on whether it is possible to quantify the costs arising from employing separate vendors for certain consulting services, and if so, how. We also request comment on the accuracy of the estimated number of issuers that would be affected by the proposed amendment. What percentage of SEC registrants use a competitive bidding process in selecting providers of non-audit services? What percentage ''sole source'' non-audit assignments? For issuers that currently acquire from their auditor non-audit services that are prohibited by the proposals, what is the additional cost of using a competitive bidding process to acquire non-audit services? Are there any benefits to the issuer of employing such a process? Under our proposed rule, how often, if at all, would an issuer be unable to find a vendor other than their auditor to provide a covered non-audit service on a comparable basis?

(b) *Public Accounting Firms.* Some public accounting firms provide a wide variety of services both to audit and non-audit clients. Our scope of services proposals are likely to affect these firms in several ways. The primary cost for these firms is that they individually may lose one source of revenue because they will no longer be able to sell certain non-audit services to their audit clients. Based on the accounting firms' SECPS reports, however, it appears that, on average, public accounting firms with fewer than 1,000 SEC registrants as clients earn less than 1% of their total fees from providing management consulting services to audit clients.[223]

The anticipated loss of revenue would primarily affect the Big 5 firms. Some members of the Big 5 provide extensive non-audit services to their audit clients. However, at least two of the Big 5 have recently sold or taken steps to separate their consulting practice from their audit practice. And, at least one other Big 5 firm has announced its intention to separate its consulting and its audit practices. In addition, the SECPS reports of the Big 5 show that almost 75% of their audit clients that are SEC registrants purchased no management consulting services from their auditor. Accordingly, the proposals appear likely to impose significant costs only on those members of the Big 5 that do not plan to separate their audit and non-audit practices (or at least that portion of their non-audit practice that provides those non-audit services listed in proposed rule 2–01(c)(4)).[224] Even then, because only about 25% of these firms' SEC audit clients buy non-audit services from their auditors, the proposals will only impose costs with respect to, at most, 25% of these firms' client relationships.

In addition, because our proposals would affect all auditors, the overall impact of the proposed restrictions may be merely to redistribute certain non-audit services among public accounting firms.[225] To the extent these services are only redistributed, there should be no net loss of revenue to public accounting firms as a whole.

We request comment on these costs and our estimates of the number of accounting firms and issuers that will be affected. Is it possible to quantify these costs? Is there any reason to believe the costs in the form of lost revenue will not be offset by equal benefits to other public accounting firms and other consulting firms?

A complete prohibition on accounting firms' providing any non-audit services could impose other, different costs on public accounting firms, such as depriving accounting firms of expertise they could have obtained from consulting activities that can be employed in audit engagements, preventing ''synergies'' from a better understanding of the client, and harming accounting firms' ability to recruit and retain employees. Our proposed rule does not ban accounting firms from providing all non-audit services, nor does it ban accounting firms from providing any non-audit services to entities other than their audit clients. It only adds certain non-audit services to those that accounting firms are already precluded from providing to a particular audit client if they wish to maintain independence from that audit client.

Nonetheless, we have considered whether our proposals are likely to impose any of these other costs on public accounting firms. For example, we have considered that the provision

[223] Of course, these firms and other firms that do not currently earn any such revenues would be precluded from earning such revenues in the future from the covered non-audit services.

[224] Public accounting firms that are separating their consulting practices would be affected if they subsequently determined to re-acquire or recreate consulting practices that included these listed services.

[225] Of course, as noted above, some of the non-audit services now provided by auditors may be redistributed to consulting firms that are not engaged in public accounting.

of non-audit services may enhance an auditor's expertise and thereby improve the efficiency or effectiveness of the audit. Our proposals would not preclude public accounting firms from developing or maintaining such expertise through consulting engagements, however. Under the proposals, public accounting firms could provide any non-audit service to clients that are not audit clients as to which they must be independent under the federal securities laws, and thereby develop or maintain their expertise. Moreover, to the extent that the effect of the proposals is merely to redistribute the provision of non-audit services among the public accounting firms, this redistribution may permit each of the firms to maintain its expertise in various of these services.

We request comment on whether our proposals on non-audit services would impose costs on accounting firms or others because accountants would have diminished expertise. If so, is it possible to quantify these costs? We also request comment on what effect, if any, reducing the pool of clients to which accounting firms can sell certain non-audit services will have on the firms' profit margins.

Our proposals also may affect what some contend are synergies (or ''knowledge spillovers'') that arise from providing non-audit services to an audit client. Research on enhanced efficiency or effectiveness of providing non-audit services to audit clients is inconclusive.[226] Anecdotal evidence that argues against knowledge spillovers is found in the recent sale or proposed sale of the consulting divisions of several large public accounting firms. If efficient and effective audits require the expertise that can be most efficiently maintained through the provision of consulting services to audit clients, these firms would be unlikely to sell their consulting practices. Thus, the sale of these consulting practices, coupled with the results of previous research, provide evidence that is inconsistent with the existence of synergies that would be negatively affected by our proposed amendments.

We seek comment on whether there are knowledge spillovers that would be lost under the proposals. If so, is there some means of quantifying this cost? Would knowledge spillovers be a concern for some or all of the non-audit services covered by our proposals? We also seek comment on whether there is evidence as to the mechanisms by which knowledge spillovers occur. For example, please provide an average of the number of hours billed on particular audit engagements by consulting personnel as a fraction of total audit hours and the number of hours of audit staff time billed for consulting services covered by the rule to an audit client of that staff member.

Finally, some accounting firms have suggested that their recruiting and employee retention would be affected if they could not provide non-audit services. According to this argument, employees or potential employees are more interested in joining accounting firms in which they will be able to engage in both audit and non-audit work, or at least have the option of engaging in both audit and non-audit work.

We seek comment on whether our proposals impose a cost of this type on accounting firms. Do a significant number of accounting firm employees engage in both: (i) audit activities, and (ii) non-audit activities that are prohibited as a result of our proposal, as part of their work? Have a significant number of accounting firm employees shifted from providing audit services to providing non-audit services that are covered by these proposals? Do the proposals significantly reduce the non-audit work available to professional audit staff? If so, how? [227]

C. Costs and Benefits of the Proposals to Add Disclosure Requirements

Our proposals require public companies, under certain circumstances, to disclose information about the non-audit services provided by their auditor, the fees for those services, and the audit fee. The proposals also require public companies to disclose, when relevant, that more than 50% of the audit was performed by personnel who are full-or part-time employees of an entity other than the audit firm.

The disclosure of non-audit services provided by a company's auditor is intended to allow investors to judge for themselves whether they believe that a particular service affects the independence of the auditor. Such disclosures have been provided in the United Kingdom for several years.

The disclosure regarding the usage of leased personnel to perform an audit is intended to allow investors to know when personnel of an entity, other than the audit firm, performed a majority of the audit so that investors can consider the independence of the other entity. Under such circumstances, the independence of the other entity and its personnel may be as relevant—if not more relevant—to auditor independence than the independence of the auditor itself.

1. Benefits

As discussed above,[228] there is growing concern about the impact of non-audit services on auditors' independence. In addition, as noted above, while the SECPS collects information on non-audit and audit fees from its member firms, it no longer publishes this information. Accordingly, such information is not readily available to, or easily accessible by, the investing public. Further, this information provides a description of service line activities by the public accounting firm for all of its clients, rather than for each audit client.

The proposals would remedy this situation. The proposed disclosure related to non-audit services provided by auditors to audit clients would give investors insight into the full relationship between a company and its auditor. In so doing, the proposed disclosure would replace uncertainty about the nature and scope of such relationships with facts about the services provided by the auditor to the company. This information may help shareholders decide, among other things, how to vote their proxies in selecting or ratifying management's selection of an auditor.

The disclosure regarding the auditor's use of another entity's employees to perform a majority of the audit work also provides important information to investors. Investors may need to know when a majority of the audit work is performed by persons who have financial, business, and personal interests in addition to, or different

[226] Two studies in the 1980s documented that audit fees were generally greater, after controlling for other factors, for clients that also purchased nonaudit services from the same public accounting firm. *See* Zoe-Vonna Palmrose, ''The effect of nonaudit services on the pricing of audit services,'' *Journal of Accounting Research,* at 405–11 (Autumn 1986); Dan A. Simunic, ''Auditing, consulting, and auditor independence,'' *Journal of Accounting Research,* at 679–702 (Autumn 1984). The authors of these studies nonetheless concluded that this evidence was consistent with the hypothesis that the joint provision of audit and nonaudit services may give rise to ''knowledge spillovers'' (i.e. enhanced efficiency or effectiveness). More recent research documents that these higher fees are associated with increased audit effort (in labor hours). *See* Larry R. Davis, David N. Ricchiute, and Greg Trompeter, ''Audit Effort, Audit Fees, and the Provision of Nonaudit Services to Audit Clients,'' *Accounting Review,* at 135–50 (Jan. 1993). The results of the Davis et al. study therefore cast doubt on the knowledge spillover hypothesis.

[227] This argument also assumes that accounting firms will not be engaged in both audit and nonaudit work. Our proposals, of course, do not prevent accounting firms from continuing to provide any nonaudit services to companies other than their audit clients.

[228] *See supra* Section II.C.

from, persons employed by the auditor. This disclosure is significant because it reveals when the ''principal auditor'' (the auditor performing a majority of the audit work) is an entity other than the firm signing the audit opinion.

We believe that the benefits of the proposed disclosure rules would include increased market efficiency due to improved information and transparency concerning the credibility and reliability of companies' financial disclosures. The value of these benefits is not readily quantifiable. We solicit comment, including supporting data if available, on the benefits of the proposed disclosure rule.

2. Costs

We believe that the proposed disclosure rule will impose relatively minor reporting costs on issuers. Generally, information about auditor independence is readily available to registrants. One basis for that information is ISB Standard No. 1, which requires auditors to report certain independence issues to the audit committees of their audit client-registrants.[229] In addition, the SECPS requires members to report annually to the audit committee, or similar body, the total fees received from the company for management advisory services during the year under audit, and a description of the types of such services rendered.[230] As a result, companies should have ready access to the information on fees paid to their auditor for non-audit services. The proposed disclosure requirement would merely require issuers to pass certain of this information on to shareholders.

For purposes of the Paperwork Reduction Act, we have estimated that our proposed disclosure rules would, on an annual basis, impose 2,473 additional burden hours on all Schedule 14A filers and 63 additional burden hours on all Schedule 14C filers, for an aggregate annual total of 2,536 additional burden hours.[231] That estimate is based on current burden hour estimates and the staff's experience with such filings. We further estimate that approximately 75% of the extra burden hours, or 1,902 hours, will be expended by companies' internal staff, and the remaining 25%, or 634 hours, by outside professional help.[232] These percentage estimates, which are based on current burden hour estimates and the staff's experience with such filings, reflect the time companies would spend preparing the additional disclosures in the proxy statement or information statement.

Assuming that the internal staff costs the company an average of about $85 per hour, the aggregate annual cost for internal staff assistance would amount to approximately $161,670. If we assume that the outside professional assistance would have an average cost of approximately $175 per hour, the aggregate annual paperwork cost would be approximately $110,950. The total annual costs would accordingly be about $272,620. We request comment on the reasonableness of these estimates and their underlying assumptions.

In addition, as noted above, some issuers would have to disclose the percentage of hours expended on the engagement by ''leased'' employees. We currently lack information on the number of issuers that would be affected by the proposed disclosures on ''leased'' employees. We expect, however, that this disclosure will be required only in rare situations where the firm has sold its non-attest practice to a financial services company and is leasing back its employees. In these situations, former employees of the firm become full-or part-time employees of the financial services company and are ''leased'' back to the accounting firm to perform audit work. This disclosure should not require any additional recordkeeping by the firm because the amount of hours performed on an audit by the lessor and by the ''leased'' personnel should be readily available from the firm's billing records. This information also should be readily available to the registrant because of the communications requirements under ISB Standard No. 1, as discussed above.

We seek comment on these and any other costs of the proposed disclosure rules. Are there any other potential costs we have not considered?

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Act Analysis (''IRFA'') in accordance with the Regulatory Flexibility Act,[233] regarding the proposed amendments to Rule 2–01 of Regulation S–X and item 9 of Schedule 14A under the Exchange Act. The following summarizes the IRFA.

As discussed in greater detail in the IRFA and in other sections of this release, there have been significant changes in accounting firms, changes in the business environment, and demographic changes since we last amended our requirements regarding the independence of auditors of financial statements filed with us. The IRFA notes that we are re-evaluating whether our auditor independence requirements remain effective, relevant and fair. In this regard, we are proposing amendments to our current requirements to address investments by auditors or their family members in audit clients, employment of auditors' family members and former partners by audit clients, and the scope of services provided by audit firms to their SEC audit clients. The IRFA also discusses the proposed proxy disclosure requirements by public companies regarding non-audit services provided by their auditors.

The IRFA sets forth the statutory authority for the proposed rules. It also discusses small entities subject to the rules.[234] The IRFA states that approximately 2,500 Exchange Act reporting companies are small businesses and approximately 227 investment companies are small businesses. The IRFA also states that the Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[235] We cannot estimate the number of firms with less than $6 million in revenues.

The IRFA indicates that the proposed rules would affect two primary groups, auditors and registrants. The IRFA states that the rules could potentially affect auditors in three areas: investments and

[229] ISB Standard No. 1, *supra* note 95. In addition, SAS No. 61 provides additional guidance on topics that an auditor should discuss with the audit committee (or board of directors if there is no such committee) of each registrant. AICPA SAS No. 61, AU § 380.

[230] SECPS Manual, *supra* note 165, at § 1000.08(i).

[231] Approximately 9,892 respondents file proxy statements under Schedule 14A and approximately 253 respondents file information statements under Schedule 14C. We based the number of entities that would complete and file each of the forms on the actual number of filers during the 1998 fiscal year.

[232] These assumptions are based on the staff's experience with these filings. We believe that a company's internal staff will typically carry most of the burden of preparing the proposed additional disclosures, and will consult with outside professionals only on specific issues that the company may periodically encounter in preparing the proxy statement or information statement.

[233] 5 U.S.C. § 603.

[234] For the purposes of this analysis, the Commission has defined ''small business'' in Securities Act Rule 157 as any entity whose total assets on the last day of its most recent fiscal year were $5 million or less and is engaged, or proposes to engage, in small business financing. 17 CFR 230.157. A registrant is considered to be engaged, or to propose to engage, in small business financing under this rule if it is conducting, or proposes to conduct, an offering of securities which does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act. 15 U.S.C. 77c(b). The Commission also has defined small business in Rule 0–10 of the Investment Company Act as an investment company that has assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10.

[235] 13 CFR 121.201.

employment relationships; non-audit services; and quality controls. With regard to investments and employment relationships, the IRFA states that the proposed rules would liberalize certain restrictions on investments by, and employment opportunities available to, accountants and their families. In this sense, compliance requirements are being relaxed.

With regard to non-audit services, the IRFA states that the vast majority of SEC registrants are audited by one of the Big Five firms, which clearly are not small entities. The IRFA explains that we have data regarding the approximately 776 accounting firms with fewer than 20 SEC audit clients,[236] which would tend to be smaller accounting firms. As the IRFA explains, we do not believe that the proposed amendments regarding consulting and non-audit services would have a significant impact on a substantial number of small accounting firms.

With regard to quality controls, the IRFA explains that the proposed rules establish a limited exception for accounting firms that institute certain quality controls and satisfy other conditions. The proposed rules, therefore, encourage, but do not require, accounting firms to adopt quality controls that ensure the independence of the firms' auditors. The IRFA explains that GAAS already require firms to have quality controls over their audit practices, and the standards refer to the SQCS for guidance regarding the elements of those systems.[237]

The proposals, however, clarify the GAAS requirement for the quality controls of firms with more than 500 SEC audit clients by setting forth certain procedures that should be part of their quality controls. For firms with fewer than 500 SEC audit clients, a firm's quality control system should take into account the size and nature of the firm's practice. For smaller firms, therefore, the proposals incorporate GAAS requirements, but do not add new requirements.

The proposed proxy disclosure rule would require registrants to disclose certain information to shareholders regarding auditor independence and regarding fees for audit and non-audit services. The proposed rules also address situations where more than 50% of the audit is performed by personnel that are full or part-time employees of another entity.

We do not believe that the proposed proxy disclosure requirement would have a significant impact on a substantial number of small entities. These requirements would apply to small businesses only if they are otherwise subject to the proxy rules. We estimate the number of those entities to be no more than 2,700, including 227 investment companies. The proposed disclosures relate to only one item on the proxy statement, and the information should be readily available to registrants because of the requirements of ISB Standard No. 1. Finally, the proposals provide an exclusion from the disclosure requirements for *de minimis* items.

As explained in the IRFA, the Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing adverse impact on small entities. In that regard, we considered the following alternatives: (a) Differing compliance or reporting requirements that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (c) use of performance rather than design standards; and (d) an exemption from the coverage of the proposed amendments for small entities.

As noted, because neither the proposals to modernize the independence rules for investments and employment relationships nor the proposed proxy disclosure requirements should have a significant economic impact on a substantial number of small entities, we did not make special provisions for small entities. Regarding the provision of non-audit services by accounting firms, including small accounting firms, we have, above, solicited comment on a number of alternative regulatory approaches. The IRFA states that because of the limited amount of non-audit services that small accounting firms provide to their SEC audit clients, we believe that the adoption of any of these alternatives would not have a significant impact on a substantial number of small businesses or small accounting firms.

The IRFA explains that the use of performance rather than design standards or providing an exemption from the coverage of the proposed amendments for small entities are not viable because it is not possible to design performance standards that would carry out our statutory mandate and we believe investors receive a significant benefit from knowing that an independent professional has examined the financial statements of a registrant, including a small registrant, with skepticism.

The IRFA includes information concerning the number of small entities that may be affected by the proposed amendments and the nature of the impact on those entities. We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we seek comment on the number of small entities that would be affected by the proposed rules; the nature of the impact; how to quantify the number of small entities that would be affected; and how to quantify the impact of the proposed rules. Comment is specifically requested regarding the number of small accounting firms that might be affected by the proposed rules, and the effect, if any, that the proposed rules would have on those firms. Please describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments. A copy of the IRFA may be obtained by contacting Robert Burns, Chief Counsel, (202) 942–4400, at the Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

VII. Paperwork Reduction Act

Certain of the provisions in the proposed amendment to item 9 of Schedule 14A contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collections of information are titled ''Regulation 14A (Commission Rules 14a–1 through 14b–2 and Schedule 14A)'' and ''Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C).'' 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 control number.

Regulation 14A (OMB Control No. 3235–0059) was adopted pursuant to section 14(a) of the Exchange Act [238] and prescribes information that a company must include in its proxy statement to ensure that shareholders

[236] ''Special Supplement: Annual Survey of National Accounting Firms—2000,'' *Public Accounting Report* (March 31, 2000); Annual Reports to SECPS, Annual reports filed with AICPA Division for CPA firms; SECPS Reports, Reports prepared by the AICPA Division for CPA firms.

[237] AICPA SAS No. 25, AU § 161 n.1.

[238] 15 U.S.C. 78n(a).

are provided information that is material to their voting decisions. Regulation 14C (OMB Control No. 3235–0057) was adopted pursuant to section 14(c) of the Exchange Act [239] and prescribes information that a company must include in an information statement when a shareholder vote is to be held but proxies are not being solicited. Schedule 14C refers to Schedule 14A for the disclosure requirements related to the company's independent accountants.

The proxy disclosure requirements in section 14 of the Exchange Act apply to those entities that have securities registered with the Commission under section 12 of that Act. The likely respondents, therefore, include entities with more than 500 shareholders and more than $10 million in assets (section 12(g)) [240] and entities with securities listed on a national exchange (section 12(b)).[241] Approximately 9,892 respondents file proxy statements under Schedule 14A and approximately 253 respondents file information statements under Schedule 14C. We based the number of entities that would complete and file each of the forms on the actual number of filers during the 1998 fiscal year.

We estimate that the total reporting burden for Schedule 14A is 179,144 hours, or approximately 18 hours per respondent. We estimate that the total reporting burden for Schedule 14C is 4,582 hours, or approximately 18 hours per respondent. These estimates include increases of 2,473 hours for Schedule 14A and 63 hours for Schedule 14C based on estimates that the proposed amendments will add one hour to the reporting burden of one-quarter of the respondents, and will not add to the burden of the other respondents. These increases are based on the fact that the information needed to make these disclosures should be readily available to the respondents and the fact that, based on information provided to the SECPS, approximately 75 percent of Commission registrants receive no non-audit services from the auditors of their financial statements and, accordingly, will not be required to make any disclosures under the proposed amendments.

We believe the proposed disclosure will bolster confidence in the securities markets by informing investors about: (i) non-audit relationships between the auditor and the audit client, and (ii) situations in which a majority of the audit work is performed by employees of an entity other than the principal audit firm signing the audit opinion. As discussed in other sections of this release, there is growing concern about the impact of non-audit services on auditors' independence. The disclosure will bring the benefit of sunshine to non-audit relationships and replace uncertainty about the nature and scope of such relationships with facts about the services provided by an auditor to each audit client. This information may be material to an investor's decision to vote on the selection or ratification of the auditor. The disclosure regarding the auditor's use of another entity's employees to perform a majority of the audit work also provides important information to investors. Investors may need to know when a majority of the audit work is performed by persons who have financial, business, and personal interests in addition to, or different from, persons employed directly by the auditor.

Compliance with the disclosure requirements is mandatory if the audit client is subject to the proxy or information disclosure requirements and either (i) the audit client has received non-audit services from the auditor of its financial statements, or (ii) the auditor used employees of another entity to perform a majority of the audit work. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) 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, (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected, and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–13–00. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–13–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[242] we are requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts.[243] We expect that in some ways the proposals will increase competition by removing the accountant's competitive advantage in bidding on or otherwise obtaining non-audit work required by audit clients.[244] We request comment on any anti-competitive effects of the proposals.

In addition, Section 3(f) of the Exchange Act requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[245] We believe that the proposals will increase investor confidence in the integrity of the audit process and in the audited financial information that they use daily to make investment and voting decisions. This increased sense of confidence should promote market efficiency and capital formation. The modernization of our rules should allow more accountants, and their families, to invest in a wider range of investment opportunities. According to information provided to the SECPS, over 100,000 individuals will have more freedom of choice in their financial investments.

[239] 15 U.S.C 78n(c).

[240] 15 U.S.C. 78*l*(g).

[241] 15 U.S.C. 78*l*(b).

[242] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[243] 15 U.S.C. 78w(aa)(2).

[244] *See supra* Section V. for a discussion of this issue.

[245] 15 U.S.C. § 78c(f).

This should increase the efficiency of the markets. We request comment on these matters.

IX. Codification Update

The ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982) is proposed to be amended as follows:

1. By removing section 602.01.
2. By removing section 602.02.a.
3. By removing section 602.02.b.i.
4. By removing section 602.02.b.ii to remove examples 2, 3, 4, 7, 8, and 10, and redesignate examples 5, 6, and 9 as examples 2, 3, and 4.
5. By removing section 602.02.b.iii.
6. By amending section 602.02.b.iv to remove the first three introductory paragraphs.
7. By amending section 602.02.c.i to remove the last two paragraphs.
8. By amending section 602.02.c.ii to remove examples 1, 2, 3, 4, 5, 7, 8, and 9 and redesignate example 6 as example 1.
9. By amending section 602.02.d to remove the two introductory paragraphs, remove examples 2, 3, 4, 5, 6, and 7, and redesignate example 8 as example 2.
10. By removing section 602.02.e.ii.
11. By removing section 602.02.e.iii.
12. By amending section 602.02.f to remove the introductory paragraph, remove examples 1, 2, 3, 4, and 5, and redesignate examples 6 and 7 as examples 1 and 2.
13. By amending section 602.02.g to remove examples 5, 15, 18, 19, and 22 and remove examples 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, 23, and 24 as examples 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, respectively.
14. By removing section 602.02.h.
15. By adding section 602.01, captioned ''Discussion of Rule 2–01,'' to include the text in the adopting release that discusses the final rules, which, if the proposed rules are adopted, would be substantially similar to topic III of this release.
16. By amending section 602.02 to redesignate sections 602.02.b.ii, 602.02.b.iv, 602.02.b.v, 602.02.c.i, 602.02.c.ii, 602.02.c.iii, 602.02.d, 602.02.e.i, 602.02.e.iv, 602.02.f, 602.02.g, 602.02.i.i, and 602.02.i.ii as sections 602.02.a.i, 602.02.a.ii, 602.02.a.iii, 602.02.b.i, 602.02.b.ii, 602.02.b.iii, 602.02.c, 602.02.d.i, 602.02.d.ii, 602.02.e, 602.02.f, 602.02.g.i, and 602.02.g.ii, respectively.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

X. Statutory Bases and Text of Amendments

We are proposing amendments to Rule 2–01 of Regulation S–X and Item 9 of Schedule 14A under the authority set forth in Schedule A and Sections 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14, and 20 of the Public Utility Holding Company Act of 1935, Sections 8, 30, and 38 of the Investment Company Act of 1940, and Sections 203 and 211 of the Investment Advisers Act of 1940.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By amending § 210.2–01 by revising paragraphs (b) and (c) and adding paragraphs (d), (e) and (f) to read as follows:

§ 210.2–01 Qualifications of accountants.

(a) * * *

(b) The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or would not be perceived by reasonable investors to be, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. Under this standard, an accountant is not independent whenever, during the audit and professional engagement period, the accountant:

(1) Has a mutual or conflicting interest with the audit client;

(2) Audits the accountant's own work;

(3) Functions as management or an employee of the audit client; or

(4) Acts as an advocate for the audit client.

(c) An accountant is not independent under the standard of paragraph (b) of this section if, during the audit and professional engagement period, the accountant has any of the financial, employment or business relationships with, provides any of the non-audit services to, or receives a contingent fee from, the accountant's audit client or an affiliate of the audit client, as specified in paragraphs (c)(1) through (c)(5) of this section, or otherwise does not comply with the standard of paragraph (b) of this section.

(1) *Financial relationships.* An accountant is not independent under the standard of paragraph (b) of this section if the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client, such as the financial relationships specified in this paragraph (c)(1).

(i) *Investment in audit client.* An accountant is not independent when:

(A) The accounting firm, any covered person in the firm, or any of his or her immediate family members, has any direct investment in an audit client or an affiliate of an audit client, such as stocks, bonds, notes, options, or other securities.

(B) Any partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, or any group of the above persons has filed a Schedule 13D or 13G with the Commission indicating beneficial ownership of more than five percent of an audit client's equity securities, or otherwise controls an audit client.

(C) The accounting firm, any covered person in the firm, or any of his or her immediate family members, serves as voting trustee of a trust or executor of an estate containing the securities of an audit client.

(D) The accounting firm, any covered person in the firm, any of his or her immediate family members, or any group of the above persons has any material indirect investment in an audit client, including:

(*1*) Ownership of more than five percent of an entity that has an ownership interest in the audit client; or

(*2*) Ownership of more than five percent of an entity of which the audit client has an ownership interest.

(ii) *Other financial interests in audit client.* An accountant is not independent when the accounting firm,

any covered person in the firm, or any of his or her immediate family members has:

(A) *Loans/debtor-creditor relationship.* Any loan (including any margin loan) to or from an audit client, an affiliate of an audit client, or an audit client's or an affiliate of an audit client's officers, directors, or record or beneficial owners of more than five percent of the audit client's or affiliate's equity securities, except for the following loans obtained from a financial institution under its normal lending procedures, terms and requirements:

(*1*) Automobile loans and leases collateralized by the automobile;

(*2*) Loans fully collateralized by the cash surrender value of an insurance policy;

(*3*) Loans fully collateralized by cash deposits at the same financial institution; and

(*4*) A mortgage loan collateralized by the accountant's primary residence provided the loan was not obtained while the borrower was a covered person in the firm or an immediate family member of a covered person in the firm.

(B) *Savings and checking accounts.* Any savings, checking or similar account at a bank, savings and loan or similar institution that is an audit client or an affiliate of an audit client, if the account has a balance that exceeds the amount insured by the Federal Deposit Insurance Corporation or any similar insurer.

(C) *Broker-dealer accounts.* Any brokerage or similar accounts maintained with a broker-dealer that is an audit client or an affiliate of the audit client, if:

(*1*) Any such accounts include any asset other than cash or securities (within the meaning of ''security'' provided in the Securities Investor Protection Act); or

(*2*) The value of assets in the accounts exceeds the amount that is subject to a Securities Investor Protection Corporation advance, for those accounts, under Section 9 of the Securities Investor Protection Act.

(D) *Futures commission merchant accounts.* Any futures, commodity, or similar account maintained with a futures commission merchant that is an audit client or an affiliate of the audit client.

(E) *Credit cards.* Any credit card balance in excess of $10,000 owed to a lender that is an audit client or an affiliate of an audit client.

(F) *Insurance products.* Any individual policy or professional liability policy originally issued by an insurer that is an audit client or an affiliate of an audit client.

(G) *Investment companies.* Any investment in any entity in an investment company complex if the audit client is also an entity in the same investment company complex. When the audit client is an entity that is part of an investment company complex, the accountant must be independent of each entity in the investment company complex.

(iii) *Exceptions.* Notwithstanding paragraphs (c)(1)(i) and (c)(1)(ii) of this section, the accountant will not be deemed not independent if:

(A) *Inheritance and gift.* Any person acquires a financial interest through an unsolicited gift or inheritance that would cause an accountant to be not independent under paragraphs (c)(1)(i) or (c)(1)(ii) of this section, and the financial interest is disposed of as soon as practicable, but no longer than 30 days after the person has the right to dispose of the financial interest.

(B) *New audit engagement.* Any person has a financial interest that would cause an accountant to be not independent under paragraphs (c)(1)(i) or (c)(1)(ii) of this section, and:

(*1*) The accountant did not audit the client's financial statements for the immediately preceding fiscal year; and

(*2*) The accountant is independent under paragraphs (c)(1)(i) and (c)(1)(ii) of this section before the earlier of:

(*i*) Accepting the engagement to provide audit, review, or attest services to the audit client; or

(*ii*) Commencing any audit, review or attest procedures (including planning the audit of the client's financial statements).

(iv) *Audit clients' financial relationships.* An accountant is not independent when:

(A) *Investments by the audit client in the auditor.* An audit client or an affiliate of an audit client has, or has agreed to acquire, any direct investment in the accounting firm or its affiliate, such as stocks, bonds, notes, options, or other securities.

(B) *Underwriting.* An audit client or an affiliate of an audit client, including a broker-dealer or other entity, performs any service for the accounting firm related to underwriting, offering, making a market in, marketing, promoting, or selling securities issued by the accounting firm, or issues an analyst report concerning the securities of the accounting firm.

(2) *Employment relationships.* An accountant is not independent under the standard of paragraph (b) of this section if the accountant has an employment relationship with an audit client or an affiliate of an audit client, such as the employment relationships specified in this paragraph (c)(2). An accountant is not independent when:

(i) *Employment at audit client of accountant.* A current partner, principal, shareholder, or professional employee of the accounting firm is employed by the audit client or an affiliate of an audit client or serves as a member of the board of directors or similar management or governing body of the audit client or an affiliate of the audit client.

(ii) *Employment at audit client of certain relatives of accountant.* A close family member of a covered person in the firm is in an accounting or financial reporting oversight role at an audit client or an affiliate of an audit client, or was in such a role during any period covered by an audit for which the covered person in the firm is a covered person.

(iii) *Employment at audit client of former employee of accounting firm.* A former partner, shareholder, principal, or professional employee of an accounting firm is in an accounting or financial reporting oversight role at an audit client or an affiliate of an audit client, unless the individual:

(A) Does not influence the accounting firm's operations or financial policies;

(B) Has no capital balances in the accounting firm; and

(C) Has no financial arrangement with the accounting firm other than one providing for regular payment of a fixed dollar amount (which is not dependent on the revenues, profits, or earnings of the firm) pursuant to a fully funded retirement plan or rabbi trust.

(iv) *Employment at accounting firm of former employee of audit client.* A former officer, director, or employee of an audit client or an affiliate of an audit client becomes a partner, shareholder, or principal of the accounting firm, unless the individual does not participate in, and is not in a position to influence, the audit of the financial statements of the audit client or an affiliate of the audit client covering any period during which he or she was employed by or associated with that audit client or an affiliate of the audit client.

(3) *Business relationships.* An accountant is not independent under the standard of paragraph (b) of this section if the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, an affiliate of an audit client, or with an audit client's or an affiliate of an audit client's officers, directors, or record or beneficial owners of more than five

percent of the audit client's or affiliate's equity securities. The relationships described in this paragraph do not include a relationship in which the accounting firm or covered person in the firm provides professional services or is a consumer in the ordinary course of business,

(4) *Non-audit services.* (i) Even if the audit client accepts ultimate responsibility for the work that is performed or decisions that are made, an accountant is not independent under the standard of paragraph (b) of this section when the accountant provides certain non-audit services to an audit client or an affiliate of an audit client, such as:

(A) *Bookkeeping or other services related to the audit client's accounting records or financial statements.* Any service involving:

(*1*) Maintaining or preparing the audit client's or an affiliate of the audit client's accounting records;

(*2*) Preparing the audit client's or an affiliate of the audit client's financial statements; or

(*3*) Generating financial information to be disclosed by the audit client or an affiliate of the audit client to the public.

(B) *Financial information systems design and implementation.* Designing or implementing a hardware or software system used to generate information that is significant to the audit client's financial statements taken as a whole, not including services an accountant performs in connection with the assessment, design, and implementation of internal accounting controls and risk management controls.

(C) *Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.* Any appraisal or valuation service for an audit client or an affiliate of an audit client, or any service involving a fairness opinion or contribution-in-kind report where it is reasonably likely that, in performing an audit in accordance with generally accepted auditing standards, the results will be audited by the accountant.

(D) *Actuarial services.* Any advisory service involving the determination of policy reserves and related accounts for the audit client or an affiliate of an audit client, unless the audit client or its affiliate uses its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities.

(E) *Internal audit outsourcing.* Internal audit services for an audit client or an affiliate of an audit client, not including nonrecurring evaluations of discrete items or programs and operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

(F) *Management functions.* Acting, temporarily or permanently, as a director, officer, or employee of an audit client or an affiliate of an audit client, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client or affiliate of the audit client.

(G) *Human resources.* Recruiting, hiring, or designing compensation packages for officers, directors, or managers of the audit client or an affiliate of the audit client; advising about the audit client's or affiliate of the audit client's management or organizational structure; developing employee evaluation programs; or conducting psychological or other formal testing of employees.

(H) *Broker-dealer, investment adviser, or investment banking services.* Acting as a securities professional, such as a broker-dealer, promoter, underwriter, analyst of the audit client's or an affiliate of the audit client's securities, investment adviser, or in any capacity recommending the purchase or sale of an audit client's or an affiliate of an audit client's securities, or designing the audit client or an affiliate of the audit client's system to comply with broker-dealer or investment adviser regulations.

(I) *Legal services.* Providing any service to an audit client or an affiliate of an audit client that, in the jurisdiction in which the service is provided, could be provided only by someone licensed to practice law.

(J) *Expert services.* Rendering or supporting expert opinions for an audit client or an affiliate of an audit client in legal, administrative, or regulatory filings or proceedings.

(ii) *Transition.* Until [insert date two years from the effective date of this section], providing to an audit client or an affiliate of an audit client the non-audit services set forth in paragraph (c)(4)(i) of this section will not impair an accountant's independence with respect to the audit client if:

(A) The non-audit services are performed pursuant to a written contract in effect on or before [insert the effective date of this section]; and

(B) Performing those services did not impair the auditor's independence under pre-existing requirements of the Commission, the Independence Standards Board, or the accounting profession in the United States.

(5) *Contingent fees.* An accountant is not independent under the standard of paragraph (b) of this section if the accountant provides any service to an audit client or an affiliate of an audit client for a contingent fee, or receives a contingent fee from an audit client or an affiliate of an audit client.

(d) *Quality controls.* An accounting firm's independence will not be impaired solely because a covered person in the firm is not independent of an audit client provided:

(1) The covered person did not know, and was reasonable in not knowing, of the circumstances giving rise to the lack of independence;

(2) The covered person's lack of independence was corrected promptly after the covered person or accounting firm became aware of it; and

(3) The accounting firm has a quality control system in place that provides reasonable assurance, taking into account the size and nature of the accounting firm's practice, that the accounting firm and its employees do not lack independence. For an accounting firm that annually provides audit, review, or attest services to more than 500 companies with a class of securities registered with the Commission under section 12 of the Securities Exchange Act of 1934, a quality control system will not provide such reasonable assurance unless it has at least the following features:

(i) Written independence policies and procedures;

(ii) An automated system to identify financial relationships that might impair the accountant's independence;

(iii) An annual or on-going firm-wide training program about auditor independence;

(iv) An annual internal inspection and testing program to monitor adherence to independence requirements;

(v) Notification to all firm members, officers, directors, and employees of the name and title of the member of senior management responsible for compliance with auditor independence requirements;

(vi) Written policies and procedures requiring all firm professionals to report promptly to the firm when they are engaged in employment negotiations with an audit client, and requiring the firm to remove immediately any such professional from that audit client's engagement and to review promptly all work the professional performed related to that audit client's engagement; and

(vii) A disciplinary mechanism to ensure compliance with this section.

(e) In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client or the affiliates of the audit client, and not just those

relating to reports filed with the Commission.

(f) *Definitions of terms.* For purposes of this section:

(1) *Accountant,* as used in paragraphs (b) through (e) of this section, means a certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.

(2) *Accounting firm* means the organization (whether it is a sole proprietorship, incorporated association, partnership, corporation, limited liability company, limited liability partnership, or other legal entity) that is engaged in the practice of public accounting or furnishing accountant's reports with respect to financial statements, reports, or other documents filed with the Commission, and all departments, divisions, parents, subsidiaries, and affiliates of the accounting firm, including its pension, retirement, investment or similar plans.

(3) *Accounting or financial reporting oversight role* means that the person is in a position to, or does influence the contents of the accounting records or financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, vice president of marketing, or any equivalent position.

(4) *Affiliate of the accounting firm.* (i) ''Affiliate of the accounting firm'' means:

(A) Any person directly or indirectly controlling, controlled by, or under common control with the accounting firm, including:

(*1*) Any person or entity directly or indirectly owning, controlling, or holding the power to vote five percent or more of the accounting firm's outstanding voting securities, partnership units, or other interest entitling a person to vote; and

(*2*) Any person or entity five percent or more of whose outstanding voting securities, partnership units, or other interest entitling a person to vote are directly or indirectly owned, controlled, or held by the accounting firm;

(B) Any officer, director, partner, copartner, or shareholder of more than five percent of the voting securities of a person described in paragraph (f)(4)(A) of this section;

(C) Any joint venture, partnership, or other undertaking in which the accounting firm participates and in which the parties agree to any form of shared benefits, including any form of shared revenue, income, or equity appreciation;

(D) Any entity that provides non-audit or other professional services to one or more of the accounting firm's audit clients, and in which the accounting firm has any equity interest in, has loaned funds to, or shares revenues with, or with which the accounting firm or any covered person in the firm has any direct business relationship;

(E) All persons and entities with which the accounting firm is publicly associated by co-branding; using the accounting firm's name, initials, or logo; cross-selling services; or using co-management; and

(F) If the accounting firm leases, or otherwise routinely acquires on a temporary or continuous basis, the services of personnel employed full- or part-time by another party (the ''lessor'') and the leased personnel perform a majority of the hours worked on the engagement or supporting the accountant's reports filed with the Commission, the lessor and the lessor's board of directors, executive officers, and all persons with management, supervisory, compensation, or other oversight responsibility for the leased personnel, and shareholders of five percent or more of the lessor's equity securities.

(ii) ''Affiliate of the accounting firm'' does not include parties that share with an accounting firm training facilities, technical knowledge, databases, or billing facilities but that have no other business or financial relationship with the accounting firm, provided that the accounting firm pays a reasonably proportionate and fair share of the costs and expenses associated with such items, and the party charges all participants no more than the costs and expenses incurred to operate or maintain the shared facility or database.

(5) *Affiliate of the audit client* means an entity that has significant influence over the audit client, or over which the audit client has significant influence, including the audit client's parent and subsidiary.

(6) *Audit and professional engagement period* includes both:

(i) The period covered by any financial statements being audited or reviewed (the ''audit period''); and

(ii) The period of the engagement to audit or review the client's financial statements or to prepare a report filed with the Commission (the ''professional engagement period'').

(A) The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements), or begins review or audit procedures, whichever is earlier; and

(B) The professional engagement period ends when the client or the accountant notifies the Commission that the client is no longer that accountant's audit client.

(7) *Audit client* means the entity whose financial statements or other information is being audited, reviewed, or attested.

(8) *Audit engagement team* means all partners, principals, shareholders, and professional employees participating in an audit, review, or attestation engagement of an audit client, including those conducting concurring or second partner reviews and all persons who consult, formally or informally, with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

(9) *Chain of command* means all persons having any supervisory, management, quality control, compensation, or other oversight responsibility over either any member of the audit engagement team or over the conduct of the audit. The ''chain of command'' includes all partners, principals, shareholders, and managers who may review, determine, or influence the performance appraisal or compensation of any member of the audit engagement team and any other person in a position to influence the audit engagement team's decisions during the conduct of the audit, review, or attestation engagement.

(10) *Close family members* means a person's spouse, spousal equivalent, parent, dependent, nondependent child, and sibling.

(11) *Consumer in the ordinary course of business* means a purchaser of routine products or services on the same terms and conditions that are available to the seller's other customers or clients, as long as the purchaser does not resell the product or service or receive a commission or other fee for selling the product or service.

(12) *Contingent fee* means any fee where payment, or the amount of the fee paid or due, is contingent, in whole or in part, on the result, including the value added, of any transaction or event, other than completion of the work or delivery of the product giving rise to the fee. A fee is not a ''contingent fee'' if it is fixed by a court or by any federal, state, or local governmental agency.

(13) *Covered persons in the firm* means the following partners, principals, shareholders, and employees of an accounting firm:

(i) The ''audit engagement team;''

(ii) The ''chain of command;''

(iii) Any other partner, principal, shareholder, or professional employee of the accounting firm who is, or during the audit client's most recent fiscal year was, involved in providing any professional service to the audit client or an affiliate of the audit client; and

(iv) Any other partner, principal, or shareholder from an ''office'' of the accounting firm that participates in a significant portion of the audit.

(14) *Group* means when two or more persons act together for the purposes of acquiring, holding, voting, or disposing of securities of a registrant.

(15) *Immediate family members* means a person's spouse, spousal equivalent, and dependent.

(16) *Investment company complex.* (i) ''Investment company complex'' includes:

(A) An investment company and its investment adviser or sponsor;

(B) Any entity controlled by, under common control with or controlling the investment adviser or sponsor in paragraph (f)(16)(A) of this section; or

(C) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. § 80a–3(c)) that has an investment adviser or sponsor included in this definition by either paragraphs (f)(16)(A) or (f)(16)(B) of this section.

(ii) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(iii) Sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

(17) *Office* means a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines.

(18) *Rabbi trust* means an irrevocable trust whose assets are not accessible to the accounting firm until all benefit obligations have been met, but are subject to the claims of creditors in bankruptcy or insolvency.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

4. By amending § 240.14a–101 to add paragraph (e) to Item 9 to read as follows:

§ 240.14a–101 Schedule 14A Information required in proxy statement.

* * * * *

Item 9. *Independent public accountants.* * * *

* * * * *

(e)(1) Describe each professional service provided during the most recent fiscal year by the independent public or certified public accountant (as defined in Article 2 of Regulation S–X, 17 CFR 210.2–01) that is the registrant's principal accountant. A service does not have to be disclosed if the fee for that service was, is, or will be less than the lesser of $50,000 or 10 percent of the fee for the audit of the registrant's annual financial statements.

Instruction to paragraph (e)(1). Specifically describe each service. Broad general categories such as ''tax matters'' or ''management advisory services'' or ''management consulting services'' are not sufficient.

(2) Indicate whether, before each disclosed professional service was rendered, the audit committee of the board of directors, or if there is no such committee then the board of directors, approved the service and considered the possible effect of the service on the principal accountant's independence.

(3) Disclose the fee for each disclosed professional service.

(4) Disclose the aggregate fee for the audit of the registrant's financial statements for the fiscal year most recently completed and for the reviews of the financial statements included in the registrant's Forms 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for that fiscal year.

(5) If greater than 50 percent, disclose the percentage of the hours expended on the principal auditor's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

* * * * *

By the Commission.

Dated: June 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A, B, and C to the preamble will not appear in the Code of Federal Regulations.

Appendix A

Services Offered by Professional Accounting Firms

Accounting and Auditing Services

1. Year-end audit. This may include assisting the client in calculating the amount of the income taxes owed, valuing stock options and other stock compensation arrangements under FAS 123, and drafting and typing up the financial statements.

2. Review of interim (monthly, quarterly) financial statements.

3. Compilation of financial statements.

4. Bookkeeping services (some firms offer this as a computer bookkeeping service).

5. Valuations of derivatives at fair market value for accounting purposes.

6. Assistance in preparation of and review of filings with the SEC, including initial public offerings.

7. Underwriter comfort letters for SEC and non-SEC filings.

8. Audit of Management's Discussion and Analysis in SEC filings.

9. Agreed upon procedures engagement (the client and auditor agree to procedures the auditor is to perform with respect to tasks such as testing a royalty arrangement or compliance with a loan agreement, and the auditor then issues a report on his or her findings).

10. Audit or review of financial forecasts or projections. This includes such documents included in offering memoranda.

11. Providing advice on how to interpret new accounting pronouncements, including providing sample journal entries.

12. Audits of financial statements of pension plan financial statements.

13. Director examinations of financial institutions.

14. CPA WebTrust—an engagement to review the security of a company's website that is conducting electronic commerce over the internet.

15. Assisting international companies in conforming their financial reporting to U.S. financial reporting practices (GAAP conversions).

16. Technical opinions on accounting matters to clients of other accounting firms.

Business Controls

1. Ethics and Responsible Business Practices—a service that helps clients address the sources of internal wrongdoing and eliminate barriers to responsible business practices.

2. Evaluation, design and implementation of internal accounting and financial reporting controls, policies and procedures.

3. Evaluation, design and implementation of management and business controls over various business functions such as management reporting systems, research and development, etc.

4. Examinations of internal controls.

5. Business Fraud and Investigation Services—helps companies identify, manage and minimize integrity risks, such as suspected management or alleged employee fraud.

Tax Services

1. Preparation of federal and state individual income tax returns.
2. Preparation of federal and state corporation tax returns.
3. Individual and corporate tax planning (including federal, state, and local taxes).
4. Personal financial planning for individuals including client employees and executives.
5. Income tax planning for executives including employee compensation and benefit plans (see below).
6. Investment planning.
7. Programs for planning for college.
8. Retirement planning programs.
9. Estate planning including preparation of wills, trusts, etc.
10. Representation of clients in tax negotiations and disputes with the IRS.
11. Review of property tax assessments.
12. Succession planning.
13. Serve as or provide tax advice to executors and trustees.
14. Tax credit reviews to determine maximum allowable credits (*e.g.,* research and development credits).
15. Trade and customs services—ensures compliance with trade laws and regulations while trying to avoid, reduce, or defer overall customs duties.
16. Transfer pricing studies and evaluation, documentation, and modification of existing policies.
17. Valuation services.
18. VAT Services.

Financial Services

1. Treasury management services including design, development and implementation of policies and procedures.
2. Credit management services including design, development and implementation of credit policies and procedures.
3. Design and structuring of financial instruments.
4. Assisting investment banking firms with the design of financial instruments and financing transactions.
5. Assistance with finding/identifying equity parties or financing parties.
6. Identification and selection of banks.
7. Assistance with or preparation of financing and loan applications.
8. Loan review services.
9. Regulatory advisory services.

Information Systems Technology

1. Selection of new hardware and software systems. This may include activities such as performing a ''needs analysis,'' preparation of a request for proposals, and overseeing, assistance with, or performance of demonstrations.
2. Implementation of new hardware and software systems. This may include:

- Full on-site team to perform all implementation services.
- Project administration of another consulting team.
- Development of necessary manual and computer control systems.
- Providing necessary computer programmers.
- Software design and programming.
- Ongoing support functions.

3. Consulting on Y2K issues such as:

- Inventory of Y2K system problems.
- Development of Y2K remediation program.

4. Development of IT management and/or strategic plans.
5. Evaluation and selection of telephone systems.
6. Business continuity planning and information security services.
7. Application controls consulting.
8. Electronic commerce services.
9. Reporting on the processing of transactions by service organizations.

Employment Benefit Programs

1. Designing and developing employee compensation programs including:

- Stock option programs.
- Retirement plans.
- Executive compensation arrangements.
- Deferred compensation and bonus arrangements.

Business Reengineering

1. Benchmarking of best practices including business and financial reporting practices.
2. Reengineering of business processes including:

- Manufacturing processes.
- Research and development processes.
- Review of spending levels (*e.g.,* for general and administrative expenses).
- Plant layout design.

3. Review of manual processes that feed into computerized information systems.
4. Staff reduction programs.

Outsourcing

Outsourcing of such client functions as:
1. Information systems. This may include outsourcing the management or the entire data processing and information systems group.
1. Internal audit function.
2. Tax department.
3. Office of the Chief Financial Officer.
4. Accounting department.
5. Human resource department.
6. Risk management function.

Corporate Finance

1. Deal due diligence.
2. Candidate targeting.
3. Preparation of offering memorandums.
4. Lead advisor for private placements
5. Merger transaction advice on:

- Structuring of transactions.
- Tax implementations.
- Sourcing capital.
- Preparation of pro forma financial statements and projections.
- Reengineering acquired businesses.
- Cost reduction and synergistic studies.

6. Appraisal and valuation of targets assets, including receivables, inventories, property, plant and equipment, intangible assets and in-process research and development.
7. Fairness opinions.
8. In some foreign jurisdictions, the firms act as stock transfer agents.
9. ''Turnaround'' business advisors.

Marketing and Distribution

1. Evaluation of marketing and distribution channels.
2. Development of marketing and distribution channel plans and consulting on the implementation of such plans.

Legal Services

1. Corporate and commercial legal services to national and international companies worldwide.
2. Assistance to law departments and general counsel to enhance and measure performance.

Litigation Support

1. Case management.
2. Expert accounting and financial reporting witnesses.
3. Damages experts and witnesses.
4. Environmental litigation experts.
5. Securities litigation experts.
6. Antitrust services.
7. Construction disputes.
8. Service of detailed data to provide cost-effective, proactive strategies and solutions to complex business disputes.

Other

1. Government Contract Consulting—helps companies understand and address business risks associated with negotiating, contracting with, and performing under contracts for the sale of goods or services with U.S. federal, state, local and foreign governments.
2. Advise government entities that are privatizing on commercialization, restructuring, competition, changing organization attitudes, customer satisfaction and policy adjustment; provides other grant-aided work in emerging markets.
3. Real Estate—provides advice about increasing the profitability of real estate assets through the acquisition, development, management and disposition of single assets or portfolios of properties. Services also include strategic planning, consolidation studies, surplus property planning, valuations, and outsourcing consulting.
4. Services for middle-sized companies—includes cash management, payroll needs, business relocation services, and shareholder meetings.
5. Insolvency/executory services—acting as receivers, liquidators, bankruptcy trustees, or advisors to debtor or creditor groups.
6. Specific services for health insurers and other health care organizations.

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APPENDIX B

Table 1
Estimated U.S. Revenues for Big 5/Big 6 Public Accounting Firms
Source: PAR

	1999	1998	1997	1996	1995	1994	1993
Total	$ 30,616	$ 25,917	$ 20,492	$ 17,305	$ 15,051	$ 13,291	$ 12,162
Estimated revenue mix by service line							
A&A	30%	30%	33%	36%	38%	44%	45%
Tax	19%	19%	20%	20%	20%	20%	22%
MCS & Other	51%	51%	47%	44%	42%	36%	32%
Estimated revenue by service line							
A&A	$ 9,150	$ 7,812	$ 6,738	$ 6,195	$ 5,762	$ 5,823	$ 5,485
Tax	$ 5,764	$ 4,871	$ 4,110	$ 3,477	$ 2,968	$ 2,673	$ 2,714
MCS & Other	$ 15,702	$ 13,234	$ 9,618	$ 7,633	$ 6,321	$ 4,796	$ 3,856
Compound growth rate of estimated U.S. revenues from 1993 to 1999							
A&A	9%						
Tax	13%						
MCS & Other	26%						

Table 2
Composition of Big 5 (Big 6/Big 8) U.S. Revenues by Service
Source: PAR, Annual Reports to SECPS, and SECPS Reports

Year	A&A		Tax		MCS & Other	
	Average	Median	Average	Median	Average	Median
1981	NA	NA	NA	NA	15%	13%
1984	NA	NA	NA	NA	16%	14%
1986	NA	NA	NA	NA	18%	18%
1988	55%	57%	23%	23%	22%	20%
1993	46%	51%	23%	22%	30%	27%
1994	45%	51%	20%	21%	34%	28%
1995	40%	43%	20%	20%	40%	35%
1996	37%	40%	21%	22%	42%	39%
1997	34%	36%	21%	21%	45%	42%
1998	31%	34%	20%	19%	49%	47%
1999	31%	33%	19%	18%	50%	49%

NA indicates that item is not reported or not available

Abbreviations of service lines:
A&A - accounting and auditing
MCS & Other - management consulting services and other non-audit, non-tax services

Table 3
Range of MCS Fees to Audit Fees for SEC Audit Clients of Big 5 (Big 6/Big 8) Firms
Source: Annual Reports to SECPS and SECPS Reports

Year	# clients	0%	1-25%	26-50%	51-100%	> 100%	>50%	>25%
1984	10,110	NA	NA	NA	NA	1.0%	NA	NA
1986	11,439	NA	NA	1.9%	1.2%	1.2%	2.5%	4.4%
1988	10,386	75.4%	19.1%	2.4%	1.6%	1.4%	3.1%	5.5%
1989	11,164	77.3%	17.0%	2.5%	1.8%	1.5%	3.2%	5.7%
1990	11,277	81.2%	13.5%	2.4%	1.5%	1.3%	2.8%	5.2%
1991	11,520	83.4%	12.5%	1.9%	1.4%	0.8%	2.2%	4.1%
1992	11,809	79.2%	16.5%	2.1%	1.1%	1.1%	2.2%	4.3%
1993	12,362	83.8%	11.5%	2.2%	1.3%	1.2%	2.5%	4.7%
1994	12,841	82.6%	12.5%	2.1%	1.4%	1.3%	2.8%	4.9%
1995	12,793	81.8%	13.4%	2.3%	1.2%	1.2%	2.4%	4.7%
1996	11,755	77.8%	16.1%	2.6%	1.9%	1.5%	3.4%	6.1%
1997	11,846	78.1%	14.8%	2.9%	2.1%	2.1%	4.2%	7.1%
1998	12,348	73.6%	16.5%	3.6%	3.1%	3.2%	6.4%	10.0%
1999	12,769	74.3%	14.3%	3.7%	3.0%	4.6%	7.6%	11.3%

NA indicates that item is not reported or not available

Table 4
MCS Activity for Public Accounting Firms Based on Number of SEC Audit Clients
For Most Recent Reporting Year
Source: SECPS Report

# clients	# firms	Average number of SEC clients	Average MCS fees from SEC clients to total fees	Average MCS fees from SEC clients to total MCS fees
> 1000	5	2554	10.0%	22.8%
100 - 1000	3	314	1.0%	3.6%
20-99	20	36	1.0%	9.9%
3 – 19	258	6	.9%	7.4%
2	167	2	.5%	3.3%
1	351	1	.4%	5.0%

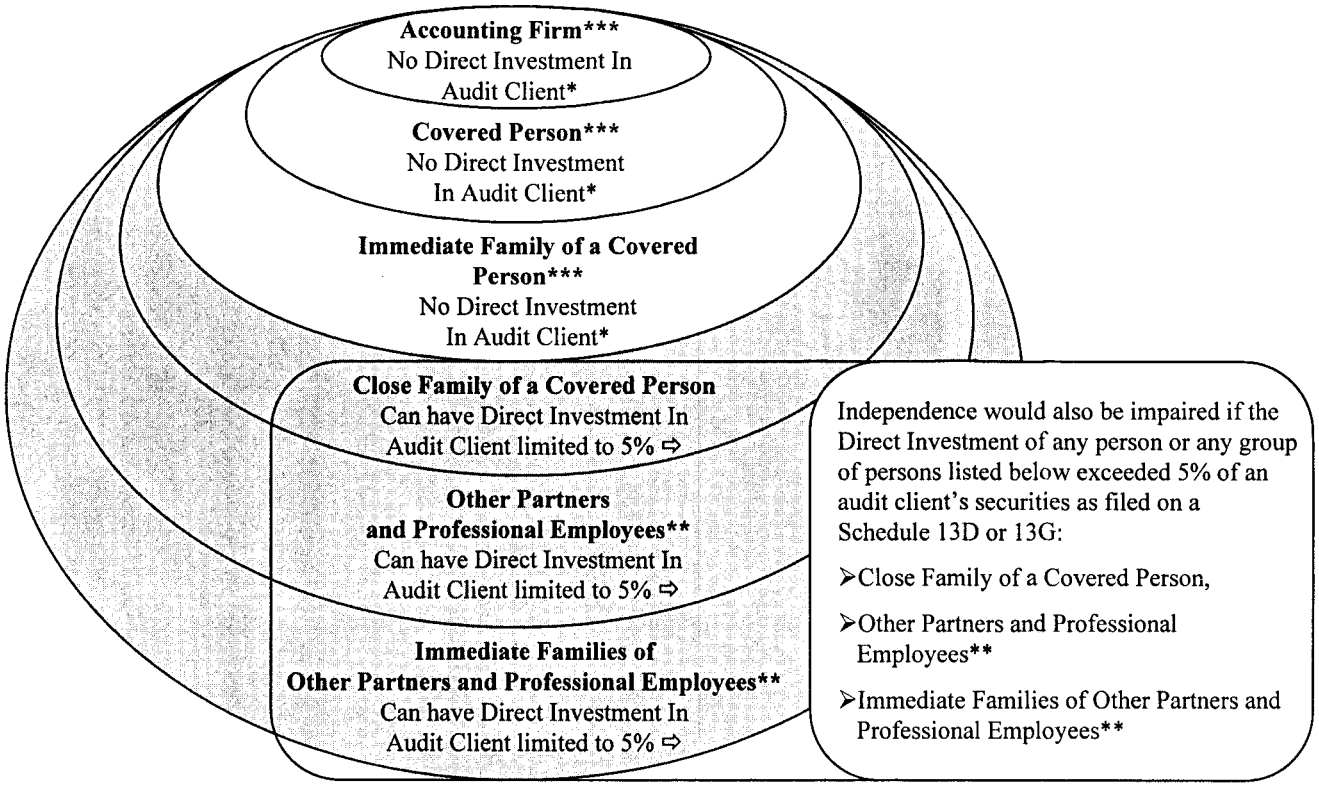
Information sources:

PAR - Public Accounting Report, "Special Supplement: Annual Survey of National Accounting Firms – 2000, March 31, 2000.

Annual Reports to SECPS - Annual reports filed with the AICPA Division for CPA Firms SECPS member public accounting firms

SECPS Reports - Reports prepared by the AICPA Division for CPA Firms

APPENDIX C
PROPOSED RULES
Investment in Audit Client
Reg. § 210.2-01(c)(1)(i)(A),(B) and (C)

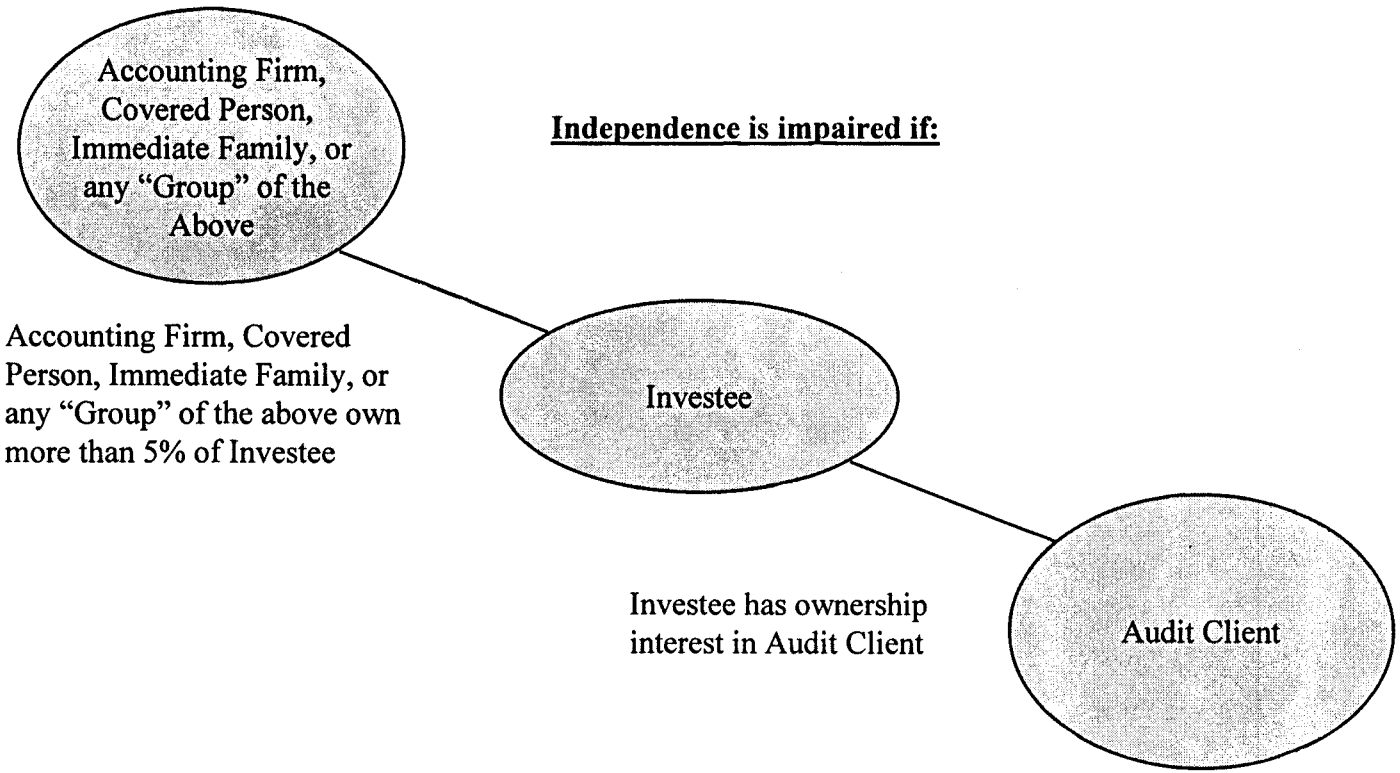


* Includes affiliates of the audit client

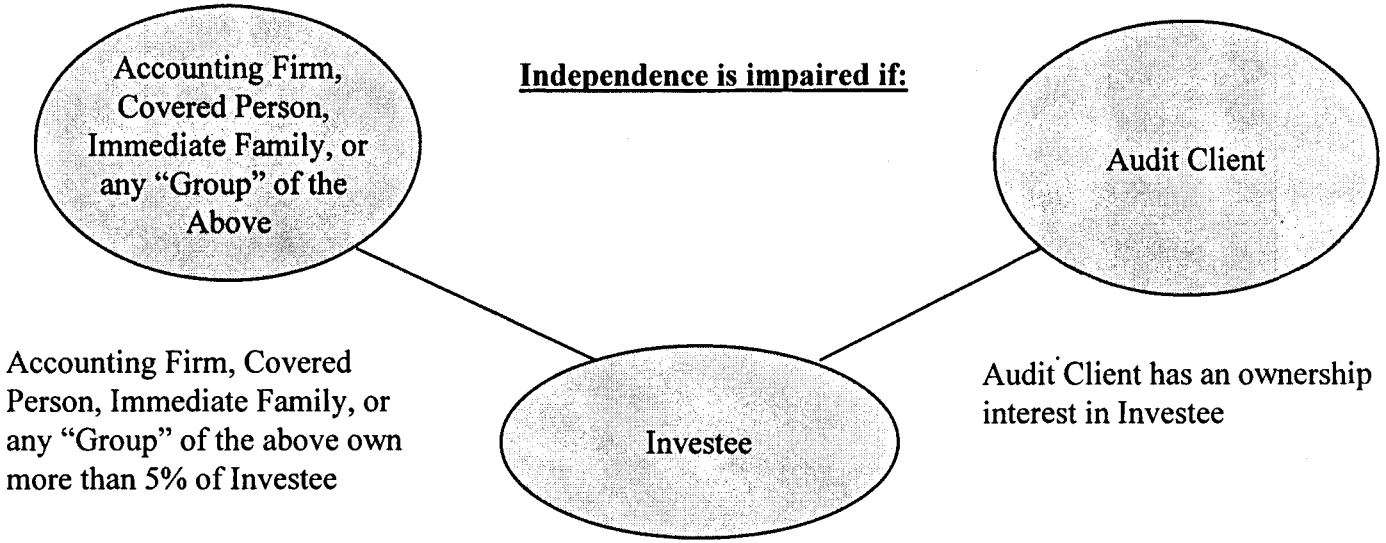
** Other Partners and Professional Employees includes partners, principals, shareholders and professional employees that are not covered persons

***The accounting firm, a covered person and the immediate family of a covered person can not be a voting trustee of a trust or executor of an estate containing the securities of an audit client.

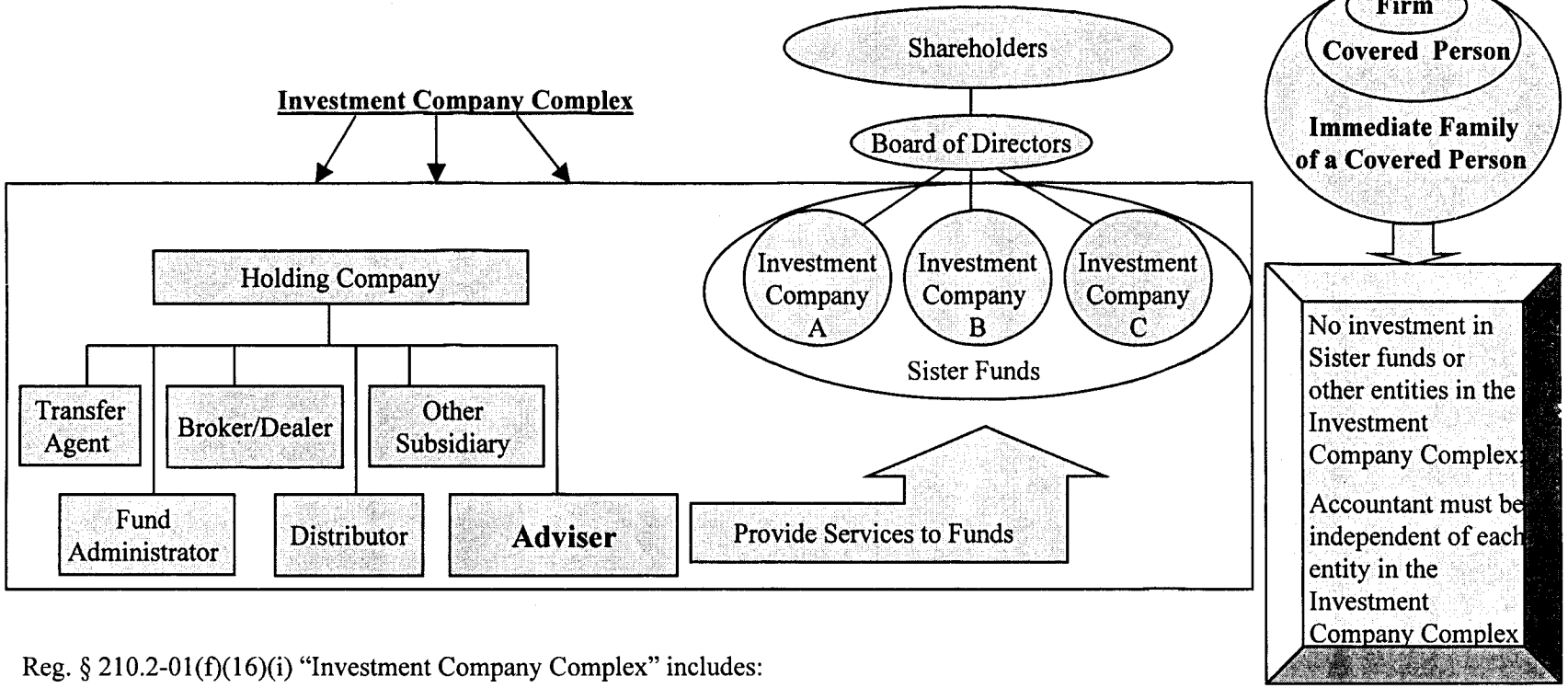
APPENDIX C (Continued)
PROPOSED RULE
Material Indirect Investments
Reg. § 210.2-01(c)(1)(i)(D)(1) Investment in Audit Client



APPENDIX C (Continued)
PROPOSED RULE
Material Indirect Investments
Reg. § 210.2-01(c)(1)(i)(D)(2) Investment in Audit Client



APPENDIX C (Continued)
PROPOSED RULE
Investment Company Complex
Reg. § 210.2-01(c)(1)(ii)(G)

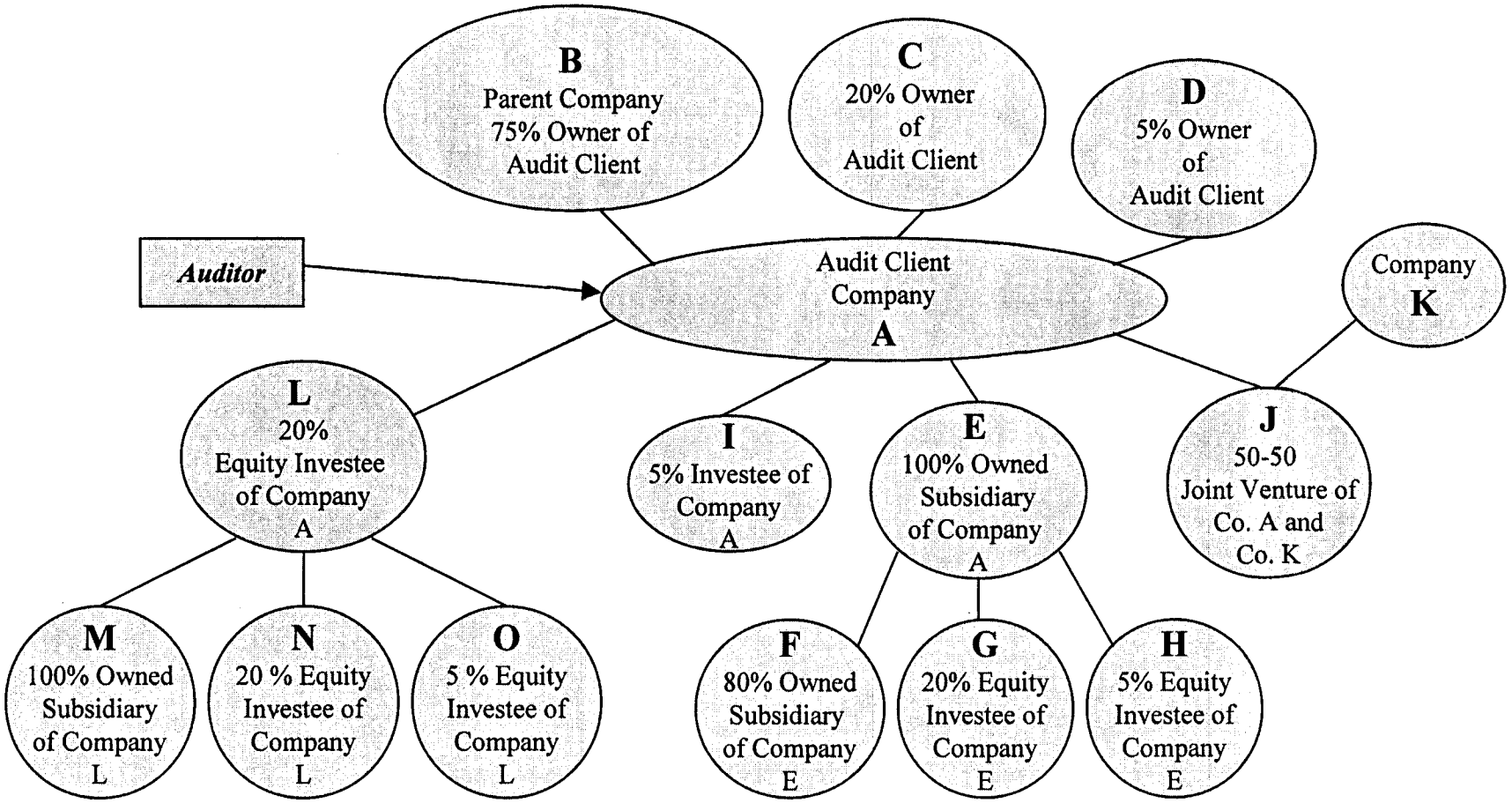


Reg. § 210.2-01(f)(16)(i) "Investment Company Complex" includes:
(A) An investment company and its investment adviser or sponsor;
(B) any entity controlled by, under common control with, or controlling the investment adviser or sponsor in paragraph (f)(16)(A) of this section; or
(C) any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 that has an investment adviser or sponsor included in this definition by either subparagraph (f)(16)(A) or (f)(16)(B)
(ii) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.
(iii) Sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

BILLING CODE 8010-01-C

APPENDIX C (Continued)
PROPOSED RULE
Affiliates of the Audit Client

Reg. § 210.2-01(f)(5)



NOTE: A detailed analysis follows applying the proposed rules to Direct and Material Indirect Financial Interests in the Audit Client and Affiliates of the Audit Client, Employment of Relatives of a Covered Person, and Non-Audit Services

Direct Investments in the Audit Client or an Affiliate of the Audit Client

Section (c)(1)(i)(A) of the proposed rule states that an accountant is not independent when the Accounting Firm, any Covered Person in the firm or a member of the Immediate Family of a Covered Person in the firm has any direct investment in an ''Audit Client'' or an ''Affiliate of the Audit Client.'' Section (f)(5) of the proposed rule defines ''Affiliate of the Audit Client'' as an entity that has significant influence over the audit client, or over which the audit client has significant influence. Also, under APB No. 18 as noted in the release, there is a presumption of significant influence where an entity owns 20% or more of an audit client or where the audit client owns 20% or more of an entity. For purposes of these examples, we assume that there are no other factors rebutting the presumption of significant influence under APB No. 18.

Both and C own 20% or more of the Audit Client. In addition, the Audit Client owns 20% or more of E, which in turn owns 20% or more of F and G. The Audit Client also owns 20% of L which in turn owns 20% or more of M and N. Finally the Audit Client owns more than 20% of J. Thus, in addition to being precluded from directly investing in A, the Accounting Firm, any Covered Person in the firm and the Immediate Families of Covered Persons in the firm would be precluded from directly investing in companies B, C, E, F, G, L, M, N, and J since these entities are affiliates of the audit client.

With respect to D, I, H, and O there is no presumption of significant influence since D only owns 5% of the Audit Client and the Audit Client only owns 5% of I and the entities over which A has significant influence, E and L, only own 5% of H and O, respectively. Under APB No. 18, as noted in the release, there could be other indicia that would cause D's ownership of the audit Client or the Audit Client's ownership of 5% of I (as well as E's ownership of H or L's ownership of the Audit Client or the Audit Client's ownership of 5% of I (as well as E's ownership of H or L's ownership of O) to rise to the independence would be impaired by direct investments in those entities.

J is an Affiliate of the Audit Client because the Audit Client owns more than 20% of J and thus has ''significant influence'' over J. However, K is not an Affiliate of the Audit Client because the Audit Client does not have ''significant influence'' over K and the accountant's independence would not be impaired by direct investments in K.

Therefore, the Accounting Form, Covered Persons and the Immediate Families of Covered Persons would not be precluded from investing in D, I, H, O, and K. Investments in D, I, H, and O could not exceed 5% of the voting interests of these entities as described under ''Material Indirect Investment in an Audit Client or an Affiliate of the Audit Client'' below.

Investments Reportable on Schedule 13D or 13G or Otherwise Control the Audit Client

Section (c)(1)(i)(B) of the proposed rule states that an accountant would not be independent if any partner, principal, shareholder, or professional employee of the accounting firm, any of his or her immediate family members, any close family member of a covered person in the firm, or any group of the above persons has filed a Schedule 13D or 13G with the Commission indicating record or beneficial ownership of more than five percent of an audit client's equity securities, or otherwise controls an audit client.

As noted above, partners and professionals in the firm other than covered persons, and their immediate families and the close family members of covered persons would not be precluded from investing in the audit Client, A. Section (c)(1)(i)(B) of the proposed rule operates to, among other things, preclude professionals in the firm from acting as a group to control the audit client. Thus, the accountant would not be independent when any partner or professional in the firm other than a covered person, a member of their immediate family, or the close family member of a covered person filed a Schedule 13D or 13G (generally required for investments over 5%) with the Commission or otherwise controlled the Audit Client, A.

Material Indirect Investment in an Audit Client or an Affiliate of the Audit Client

Section (c)(1)(i)(D) of the proposed rule states that an accountant would not be independent if the accounting firm, any covered person in the firm or the immediate family member of a covered person or any group of these persons owned more than 5% of an entity that has an ownership interest in the audit client or more than 5% of an entity of which the audit client has an ownership interest.

Assuming that D, I, H, and O are not affiliates, the accounting firm, a covered person in the firm or the immediate family of a covered person or any group of these persons could own up to 5% of these entities without impairing independence since a 5% investment would be considered an immaterial indirect investment in the Audit Client, A.

Employment of Relatives of a Covered Person

Section (c)(2)(ii) of the proposed rule states that an accountant will not be independent if a close family member of a covered person in the firm is in an accounting or financial reporting oversight role at an audit client or an affiliate of an audit client or was in such a role during any period covered by an audit for which the covered person in the firm is a covered person.

As noted above, B, C, E, F, G, L, M, N, and J are affiliates of the audit client. Consequently, the accountant would not be independent when any close family member of a covered person in the firm was employed in accounting or financial reporting oversight role at the Audit Client A or the affiliates of the audit client, B, C, E, F, G, L, M, N, or J.

Subject to the general standard, a close family member of a covered person could work in any position at D, I, H, O, or K since those entities are not affiliates of the audit client.

Non-Audit Services

Section (c)(4)(i) of the proposed rule provides that an accountant will not be independent when the accountant provides certain non-audit services to an audit client or an affiliate of an audit client.

Accordingly, the accountant would not be independent if the accounting firm provided any prohibited non-audit services to the Audit Client, A, or to any affiliate of the audit client including B, C, E, F, G, L, M, N, and J. Subject to the general standard, the firm would not be precluded from providing non-audit services to D, I, H, O, or K since these entities are not affiliates of the audit client.

[FR Doc. 00–17207 Filed 7–11–00; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
July 12, 2000

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Department of the Interior

Protection of the Coral Reef Ecosystem of the Northwestern Hawaiian Islands; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Protection of the Coral Reef Ecosystem of the Northwestern Hawaiian Islands

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); Department of the Interior (DOI).

ACTION: Request for comments; notice of public meetings.

SUMMARY: On May 26, 2000 President William Jefferson Clinton announced his intention to provide strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands. The President signed a Memorandum directing the Secretaries of the Interior and Commerce, in cooperation with the State of Hawaii and in consultation with the Western Pacific Fishery Management Council, to develop recommendations for a new, coordinated management regime to increase protection for the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use. The President also directed the Departments of the Interior and Commerce to conduct ''visioning sessions, which would provide opportunities for public hearing and comment to help shape the final recommendations.'' As part of the visioning process, by this notice the Departments of the Interior and Commerce request comments on a number of specific issues pertaining to the protection of the coral reef ecosystem of the Northwestern Hawaiian Islands. This notice also announces the dates, times and locations for a number of public hearings to receive comments on these issues. The comments received will be used to inform the Departments as they develop the recommendations for the President.

DATES: Comments must by received by August 2, 2000.

ADDRESSES: Comments should be sent to the U.S. Institute for Environmental Conflict Resolution, Suite 3350, 110 South Church Avenue, Tucson, AZ 85701, ATTN: Northwestern Hawaiian Islands. Comments may also be sent to the Institute's website at *www.ecr.gov/nwhi.*

There will be seven public meetings on the Northwestern Hawaiian Islands initiative. The dates, times and locations are listed below.

FOR FURTHER INFORMATION CONTACT: Marla Steinhoff, NOAA, (301) 713–3155, ext. 208; or Jessica Jenkins, DOI, (202) 219–0710.

I. SUPPLEMENTARY INFORMATION:

1. Northwestern Hawaiian Islands

The Northwestern Hawaiian Islands are an archipelago of uninhabited islands over 1200 miles long located west of the main Hawaiian Islands. They include Nihoa and Necker Islands, French Frigate Shoals, Maro Reef, and Pearl & Hermes Atoll, and are surrounded by some of the healthiest and most extensive coral reefs in U.S. waters. The coral reef ecosystem extends from near-shore areas just beneath the ocean surface to depths of approximately 100 fathoms (600 feet).

The coral reef ecosystem of the Northwestern Hawaiian Islands encompasses approximately 10,000 square kilometers and is home to a diverse and unique assemblage of fish, invertebrates, birds, sea turtles, marine mammals and other species, including many species found nowhere else on Earth. Federally protected species include the threatened green sea turtle, the endangered leatherback and hawksbill sea turtles, and the only remaining population of the endangered Hawaiian monk seal.

2. The President's Memorandum

The following is the text of the President's Memorandum to the Secretaries of the Interior and Commerce.

May 26, 2000.

Memorandum for the Secretary of the Interior, the Secretary of Commerce

Subject: Protection of U.S. Coral Reefs in the Northwest Hawaiian Islands

The world's coral reefs—our tropical rain forests of the water are in serious decline. These important and sensitive areas of biodiversity warrant special protection. While the United States has only 3 percent of the world's coral reefs, nearly 70 percent of U.S. coral reefs are in the Northwest Hawaiian Islands. Many of the Northwest Hawaiian Islands' coral, fish, and invertebrate species are unique, and the area is home to endangered Hawaiian monk seals and threatened turtles. In 1909, President Theodore Roosevelt set aside certain islands and reefs in the Northwest Hawaiian Islands for the protection of sea birds. Today, the U.S. Fish and Wildlife Service manages this area as the Hawaiian Islands National Wildlife Refuge.

In June 1998, I signed an Executive Order for Coral Reef protection (E.O. 13089), which established the Coral Reef Task Force and directed all Federal agencies with coral reef-related responsibilities to develop a strategy for coral reef protection. States and territories with coral reefs were invited to be full partners with the Federal Government in preparing an action plan to better protect and preserve the Nation's coral reef ecosystems. In March of this year, the Task Force issued the National Action Plan to Conserve Coral Reefs. The Plan lays out a science-based road map to healthy coral reefs for future generations, based on two fundamental strategies: Promoting understanding of coral reef ecosystems by, for example, conducting comprehensive mapping, assessment, and monitoring of coral reefs; and reducing the adverse impacts of human activities by, for example, creating an expanded and strengthened network of Federal, State, and territorial coral reef Marine Protected Areas, reducing the adverse impact of extractive uses, and reducing habitat destruction.

It is time now to take the Coral Reef Task Force's recommendations and implement them to ensure the comprehensive protection of the coral reef ecosystem of the Northwest Hawaiian Islands through a coordinated effort among the Departments of the Interior and Commerce and the State of Hawaii.

Accordingly, I have determined that it is in the best interest of our Nation, and of future generations, to provide strong and lasting protection for the coral reef ecosystem of the Northwest Hawaiian Islands, and I am directing you to initiate an administrative process to that end. Specifically, I direct you, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fisheries Management Council, to develop recommendations within 90 days for a new, coordinated management regime to increase protection of the ecosystem and provide for sustainable use. Further, I direct that your recommendations address whether appropriate stewardship for the submerged lands and waters of the Northwest Hawaiian Islands warrants exercise of my authority to extend permanent protection to objects of historic or scientific interest or to protect the natural and cultural resources of this important area.

The recommendations should also:

- Review the status and adequacy of all ongoing efforts to protect the coral reef ecosystem, including proposed no-take ecological reserves and the ongoing work of the Western Pacific Fisheries Management Council;
- To the extent permitted by law, ensure that any actions that the Departments of the Interior and Commerce authorize, fund, or carry out will not degrade the conditions of the coral reef ecosystems;
- Identify any further measures necessary to protect cultural and historic resources and artifacts;
- Identify any further measures necessary for the protection of the ecosystem's threatened and endangered species, including the endangered monk seal, sea turtles, and short-tailed albatross;
- Establish a framework for scientific research and exploration;
- Establish a framework for facilitating recreation and tourism in the Northwest Hawaiian Islands consistent with the protection and sustainable management of the ecosystem;
- Provide for culturally significant uses of the Northwest Hawaiian Islands' marine resources by Native Hawaiians; and

• Address the development of a cooperative framework, in consultation with the State of Hawaii and the Western Pacific Fisheries Management Council, to ensure that the goals set forth above will be implemented in a cooperative manner, consistent with existing authorities.

I also direct that during the 90-day period, the Departments shall conduct ''visioning'' sessions, which would provide opportunities for public hearing and comment to help shape the final recommendations.

With this new effort, we are taking strides to fulfill the goal of the Coral Reef Task Force to protect our precious coral reefs for the benefit of future generations.

William J. Clinton

II. Request for Comments

As part of the visioning process the Departments of the Interior and Commerce request comments on the following issues related to the coral reef ecosystem of the Northwestern Hawaiian Islands.

(1) Those qualities of the Northwestern Hawaiian Islands coral reef ecosystem that are most important to be preserved through new, strong and lasting protections;

(2) The current threats to the Northwestern Hawaiian Islands coral reef ecosystem;

(3) The future threats to the Northwestern Hawaiian Islands coral reef ecosystem;

(4) The types of activities and uses (including culturally significant uses) that are appropriate in the Northwestern Hawaiian Islands;

(5) The types of activities and uses that are inappropriate in the Northwestern Hawaiian Islands; and

(6) The types of management tools, actions, and approaches that should be used to ensure strong and lasting protection of the Northwestern Hawaiian Islands coral reef ecosystem.

In addition, the Departments welcome comments on the bulleted items set forth in the President's Memorandum.

III. Public Meetings

There will be seven public meetings on the Northwestern Hawaiian Islands initiative. The dates, times and locations are as follows:

July 21, 1–4 p.m.—Washington, D.C.—Department of Commerce Auditorium (14th and Constitution Ave. NW)
July 24, 6–9 p.m.—Oahu—Kalihi Kai Elementary School Cafeteria
July 25, 6–9 p.m.—Maui—Baldwin High School Auditorium
July 27, 6–9 p.m.—Kona—Kealakehe High School Cafeteria
July 28, 6–9 p.m.—Hilo—Hilo High School Cafeteria
July 31, 6–9 p.m.—Kauai—Kauai Community College Cafeteria
August 1, 6–9 p.m.—Molokai—Mitchell Pauole Center

Any changes in dates, times or location shall also be posted in the local media. This information may also be found at *www.ecr.gov/nwhi*.

Dated: July 6, 2000.

Scott Gudes,

Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce.

Stephen C. Saunders,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 00–17587 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–22–P

Federal Register

Wednesday,
July 12, 2000

Part VI

The President

Executive Order 13162—Federal Career Intern Program

Federal Register
Vol. 65, No. 134
Wednesday, July 12, 2000

Presidential Documents

Title 3—

The President

Executive Order 13162 of July 6, 2000

Federal Career Intern Program

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to provide for the recruitment and selection of exceptional employees for careers in the public sector, it is hereby ordered as follows:

Section 1. There is hereby constituted the Federal Career Intern Program (Program). The purpose of the Program is to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies, and to prepare them for careers in analyzing and implementing public programs. ''Career Intern'' is a generic term, and agencies may use occupational titles as appropriate.

Sec. 2. The Program is another step in the Administration's effort to recruit the highest caliber people to the Federal Government, develop their professional abilities, and retain them in Federal departments and agencies. Cabinet secretaries and agency administrators should view the Program as complementary to existing programs that provide career enhancement opportunities for Federal employees, and departments and agencies are encouraged to identify and make use of those programs, as well as the new Program, to meet department and agency needs.

Sec. 3. (a) The Office of Personnel Management (OPM) shall develop appropriate merit-based procedures for the recruitment, screening, placement, and continuing career development of Career Interns.

(b) In developing those procedures, the OPM shall provide for such actions as deemed appropriate to assure equal employment opportunity and the application of appropriate veterans' preference criteria.

Sec. 4. (a) A successful candidate shall be appointed to a position in Schedule B of the excepted service at the GS–5, 7, or 9 (and equivalent) or other trainee level appropriate for the Program, unless otherwise approved by the OPM. The appointment shall not exceed 2 years unless extended by the Federal department or agency, with the concurrence of the OPM, for up to 1 additional year.

(b) Tenure for a Career Intern shall be governed by the following principles and policies:

(1) Assigned responsibilities shall be consistent with a Career Intern's competencies and career interests, and the purposes of the Program.

(2) Continuation in the Program shall be contingent upon satisfactory performance by the Career Intern throughout the internship period.

(3) Except as provided in subsections (4) and (5) of this section, service as a Career Intern confers no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(4) Competitive civil service status may be granted to a Career Intern who satisfactorily completes the internship and meets all other requirements prescribed by the OPM.

(5) Within an agency, an employee who formerly held a career or career-conditional appointment immediately before entering the Career Intern Program, and who fails to complete the Career Intern Program for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the Career Intern Program.

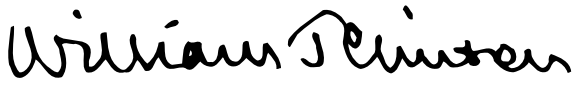
Sec. 5. A Career Intern shall participate in a formal program of training and job assignments to develop competencies that the OPM identifies as core to the Program, and the employing agency identifies as appropriate to the agency's mission and needs.

Sec. 6. The OPM shall prescribe such regulations as it determines necessary to carry out the purpose of this order.

Sec. 7. The OPM shall provide oversight of the Program.

Sec. 8. Executive Order 12596 of May 7, 1987, is revoked.

Sec. 9. *Judicial Review*. This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity, by a party against the United States, its agencies, its officers or employees, or any other person.



THE WHITE HOUSE,
July 6, 2000.

[FR Doc. 00–17829
Filed 7–11–00; 8:45 am]
Billing code 3195–01–P

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FEDERAL REGISTER PAGES AND DATE, JULY

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 12, 2000

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3051/P.L. 106–243

To direct the Secretary of the Interior, the Bureau of Reclamation, to conduct a feasibility study on the Jicarilla Apache Reservation in the State of New Mexico, and for other purposes. (July 10, 2000; 114 Stat. 497)

S. 1309/P.L. 106–244

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans. (July 10, 2000; 114 Stat. 499)

S. 1515/P.L. 106–245

Radiation Exposure Compensation Act Amendments of 2000 (July 10, 2000; 114 Stat. 501)

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