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Washington, DC
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RESERVATIONS: 202–523–4538

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Docket Number LS–99–18]

RIN No. 0581–AB64

Livestock and Grain Market News Branch: Livestock Mandatory Reporting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; postponement of effective date.

SUMMARY: This document postpones the effective date of the final rule (65 FR 75464) which establishes a mandatory program of reporting information regarding the marketing of cattle, swine, lambs, and products of such livestock under the ''Livestock Mandatory Reporting Act of 1999.'' The postponement of the effective date is being taken so that adequate time is available for AMS and those entities required to report to test the electronic information collection system being implemented by the program. This action will both ensure that the confidentiality of those required to report information is maintained while market participants are provided with accurate information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products, that can be readily understood by producers, packers, and other market participants.

EFFECTIVE DATE: The effective date of the final rule amending 7 CFR part 59 published at 65 FR 75464, December 1, 2000, is postponed from January 30, 2001, to April 2, 2001.

FOR FURTHER INFORMATION CONTACT: If you have questions about the regulations, please call John E. Van Dyke, Chief, Livestock and Grain Market News Branch at (202) 720–6231, fax (202) 690–3732, or E-mail us at john.vandyke@usda.gov.

Additional information may also be obtained from the AMS web site: http://www.ams.usda.gov/lsg/price.htm as it becomes available.

SUPPLEMENTARY INFORMATION:

Background

The Livestock Mandatory Reporting Act of 1999 (Act) was enacted into law on October 22, 1999 (Pub. L. 106–78; 113 Stat. 1188; 7 U.S.C. 1635–1636(h)) as an amendment to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Act provides for the mandatory reporting of market information by federally inspected livestock processing plants which have slaughtered an average number of livestock during the immediately preceding 5 calendar years (125,000 for cattle and 100,000 for swine), including any processing plant that did not slaughter during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the plant's capacity. For entities that did not slaughter during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

The Act gives the Secretary the latitude to provide for the reporting of lamb information. AMS is requiring the reporting of market information by federally inspected lamb processing plants who have slaughtered an average of 75,000 head of lambs or processed an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years. Additionally, a lamb processing plant that did not slaughter an average of 75,000 lambs or process an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years will be required to report information if the Secretary determines the processing plant should be considered a packer based on its capacity. An importer of lamb that, for any calendar year, imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years report such lamb information as specified in these regulations. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years will be required to report information if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

These packers are required to report the details of all transactions involving purchases of livestock (cattle, swine, and lambs), and the details of all transactions involving domestic and export sales of boxed beef cuts, including applicable branded product, sales boxed lamb cuts, including applicable branded product, and sales of lamb carcasses. These importers are required to report the details of all transactions involving the sales of imported boxed lamb cuts. This information will be reported to AMS according to the schedule established by the Act and these regulations with purchases of swine reported three times each day, purchases of cattle and lambs reported twice each day, domestic and export sales of boxed beef cuts including applicable branded boxed beef cuts reported twice each day, sales of lamb carcasses and boxed lamb cuts, including applicable branded boxed lamb cuts, to be reported once daily, and sales of imported lamb cuts once weekly.

AMS developed the electronic information collection system that will receive information from those entities required to report and will convert the information into reports that AMS will publish for market participants to utilize. These published reports will provide market participants with accurate information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products, that can be readily understood by producers, packers, and other market participants. The electronic information collection system collects and manages the data received from those entities required to report and was designed in a manner that ensures security of data transmission and storage, and confidentiality of information that is maintained by USDA.

Since publication of the final rule on December 1, 2000, AMS, with the

assistance of technical experts, has initiated testing of the system with those entities required to report. AMS has determined that additional time is required to adequately test the system and ensure that all program requirements and objectives are met. Accordingly, AMS has postponed the effective date of the regulations and the date which those entities required to report would be required to begin transmitting data until April 2, 2001.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: January 26, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–2639 Filed 1–26–01; 3:10 pm]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Guidelines for Safeguarding Member Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is modifying its security program requirements to include security of member information. Further, the NCUA Board is issuing ''Guidelines for Safeguarding Member Information'' to implement certain provisions of the Gramm-Leach-Bliley Act (the GLB Act or Act).

The GLB Act requires the NCUA Board to establish appropriate standards for federally-insured credit unions relating to administrative, technical, and physical safeguards for member records and information. These safeguards are intended to: Insure the security and confidentiality of member records and information; protect against any anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any member.

DATES: This rule is effective July 1, 2001.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Matthew Biliouris, Information Systems Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Background
II. Overview of Comments Received
III. Section-by-Section Analysis
IV. Regulatory Procedures
  A. Paperwork Reduction Act
  B. Regulatory Flexibility Act
  C. Executive Order 13132
  D. Treasury and General Government Appropriations Act, 1999
  E. Small Business Regulatory Enforcement Fairness Act
V. Agency Regulatory Goal

I. Background

On November 12, 1999, President Clinton signed the GLB Act (Pub. L. 106–102) into law. Section 501, entitled Protection of Nonpublic Personal Information, requires the NCUA Board, the federal banking agencies (including the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision), the Securities and Exchange Commission, state insurance authorities, and the Federal Trade Commission (collectively, the ''Agencies'') to establish appropriate standards for the financial institutions subject to their respective jurisdictions relating to the administrative, technical, and physical safeguards for customer records and information. These safeguards are intended to: (1) Insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that would result in substantial harm or inconvenience to any customer.

Section 505(b) of the GLB Act provides that these standards are to be implemented by the NCUA and the federal banking agencies in the same manner, to the extent practicable, as standards pursuant to section 39(a) of the Federal Deposit Insurance Act (FDIA). Section 39(a) of the FDIA requires the federal banking agencies to establish operational and managerial standards for insured depository institutions relative to, among other things, internal controls, information systems, and internal audit systems, as well as such other operational and managerial standards as determined to be appropriate. 12 U.S.C. 1831p(a). Section 39 of the FDIA provides for standards to be prescribed by guideline or by rule. 12 U.S.C. 1831p(d)(1). The FDIA also provides that if an institution fails to comply with a standard issued as a rule, the institution must submit a compliance plan within particular time frames, while if an institution fails to comply with a standard issued as a guideline, the agency has the discretion as to whether to require an institution to submit a compliance plan. 12 U.S.C. 1831p(e)(1).

Section 39 of the FDIA does not apply to the NCUA, and the Federal Credit Union Act does not contain a similar, regulatory framework for the issuance and enforcement of standards. In preparation of NCUA's regulation and appendix with guidelines, NCUA staff worked with an interagency group that included representatives from the federal banking agencies. The NCUA Board's understanding is that the federal banking agencies recently have approved standards by guidelines issued as appendices to their safety and soundness standards.

The NCUA Board has determined that it can best meet the congressional directive to prescribe standards through an amendment to NCUA's existing regulation governing security programs in federally-insured credit unions. The final regulation requires that federally-insured credit unions establish a security program addressing the safeguards required by the GLB Act. The Board is also issuing an appendix to the regulation that sets out guidelines, the text of which is substantively identical to the guidelines approved by the federal banking agencies. The guidelines are intended to outline industry best practices and assist credit unions to develop meaningful and effective security programs to ensure their compliance with the safeguards contained in the regulation.

Currently, NCUA regulations require that federally-insured credit unions have a written security program designed to protect each credit union from robberies, burglaries, embezzlement, and assist in the identification of persons who attempt such crimes. Expanding the environment of protection to include threats or hazards to member information systems is a natural fit within a comprehensive security program. To evaluate compliance, the NCUA will expand its review of credit union security programs and annual certifications. This review will take place during safety and soundness examinations for federal credit unions and within the established oversight procedures for state-chartered, federally-insured credit unions. If a credit union fails to establish a security program meeting the regulatory objectives, the NCUA Board could take a variety of administrative actions. The Board could use its cease and desist authority,

including its authority to require affirmative action to correct deficiencies in a credit union's security program. 12 U.S.C. 1786(e) and (f). In addition, the Board could employ its authority to impose civil money penalties. 12 U.S.C. 1786(k). A finding that a credit union is in violation of the requirements of § 748.0(b)(2) would typically result only if a credit union fails to establish a written policy or its written policy is insufficient to reasonably address the objectives set out in the proposed regulation.

The guidelines apply to ''nonpublic personal information'' of ''members'' as those terms are defined in 12 CFR part 716, NCUA's rule captioned Privacy of Consumer Financial Information (the Privacy Rule or Part 716). *See* 65 FR 31722, May 18, 2000. Under section 503(b)(3) of the GLB Act and part 716, credit unions will be required to disclose their policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic personal information as part of the initial and annual notices to their members. Defining terms consistently should facilitate the ability of credit unions to develop their privacy notices in light of the guidelines set forth here. NCUA derived key components of the guidelines from security-related supervisory guidance developed with the federal banking agencies through the Federal Financial Institutions Examination Council (FFIEC).

The NCUA Board requested comment on all aspects of the proposed amendment of § 748.0 and the guidelines, as well as comment on the specific provisions and issues highlighted in the section-by-section analysis below.

II. Overview of Comments Received

On June 6, 2000, the NCUA Board approved a proposal to revise 12 CFR part 748 to include requirements for administrative, technical, and physical safeguards for member records and information, as required by the GLB Act. 65 FR 37302, Jun. 14, 2000. The comment period for the proposed rule ended August 14, 2000. NCUA received 13 comments on the proposal: two from natural person credit unions, one from a corporate credit union, two from national credit union trade associations, seven from state credit union leagues, and one from a miscellaneous trade group. In addition, the other FFIEC Agencies collectively received a total of 206 comments. While NCUA carefully considered all comments on our proposed rule, to remain as consistent as practicable with the other FFIEC Agencies, NCUA has made some changes in the final rule as a result of interagency discussions.

NCUA invited comment on all aspects of the proposed guidelines, including whether the rule should be issued as guidelines or as regulation. Commenters overwhelmingly supported the adoption of guidelines as discussed below. Several commenters cited the benefits of flexibility and the drawbacks of prescriptive requirements that could become rapidly outdated as a result of changes in technology.

In light of the comments received, the NCUA has decided to adopt the guidelines, with several changes as discussed below to respond to the commenters' suggestions.

In directing the Agencies to issue standards for the protection of customer records and information, Congress provided that the standards apply to all financial institutions, regardless of the extent to which they may disclose information to affiliated or nonaffiliated third parties, electronically transfer data with customers or third parties, or record data electronically. Because the requirements of the Act apply to a broad range of financial institutions, the NCUA and the other FFEIC Agencies believe that the guidelines must establish appropriate standards that allow each institution the discretion to design an information security program that suits its particular size and complexity and the nature and scope of its activities. In some instances, credit unions already will have information security programs that are consistent with these guidelines. In such situations, little or no modification to a credit union's program will be required.

Below is a section-by-section analysis of the final guidelines.

III. Section-by-Section Analysis

The discussion that follows applies to the final rule Part 748.

The security program in § 748.0(b) previously addressed only those threats due to acts such as robberies, burglaries, larcenies, and embezzlement. In the emerging electronic marketplace, the threats to members, credit unions, and the information they share to have a productive, technologically competitive, financial relationship have increased. The security programs to ensure protections against these emerging crimes and harmful actions must keep pace. Congress directed in section 501(b) of the GLB Act that the Agencies establish standards to ensure financial institutions protect the security and confidentiality of the nonpublic personal information of their customers.

To meet this directive, the proposed rule revised paragraph (b) of § 748.0 to require that a credit union's security program include protections to ensure the security and confidentiality of member records, protect against anticipated threats or hazards to the security or integrity of such records, and protect against unauthorized access to or use of such records that could result in substantial harm or inconvenience to a member. This modification expanded the security program objectives to include the emerging threats and hazards to members, credit unions, and the information they share to have a financial relationship.

NCUA has adopted this revision as proposed with one exception. NCUA has changed the reference in section 748.0(b)(4) from ''the Accounting Manual for Federal Credit Unions'', to ''12 CFR part 749.'' NCUA is currently revising Part 749 regarding a credit union's preservation of vital records.

The discussion that follows applies to the NCUA's final guidelines.

Appendix A to Part 748—Guidelines for Safeguarding Member Information

I. Introduction

Paragraph I. sets forth the general purpose of the guidelines, which is to provide guidance to each credit union in establishing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of member information. This paragraph also sets forth the statutory authority for the final guidelines, sections 501 and 505(b) of the GLB Act. 15 U.S.C. 6801 and 6805(b). The NCUA received no comments on this paragraph, and has adopted it as proposed.

I.A. Scope

Paragraph I.A. describes the scope of the proposed guidelines. The guidelines apply to member information maintained by or on behalf of all federally-insured credit unions. NCUA has adopted the scope as proposed.

The NCUA received a comment requesting clarification on whether the rule includes corporate credit unions. This commenter indicated that because of the use of the word ''consumer'' throughout the proposed rule, it is feasible to presume that the proposed rule is referring only to natural person credit unions.

The general purpose of the guidelines is to provide guidance to credit unions in establishing and implementing safeguards to protect member information. It appears that a corporate credit union will rarely have natural person members or customers. Such members appear to be limited to those

corporate credit unions that have natural person incorporators that maintain a share account. Those members are limited in number. However, if a corporate credit union has a natural person member, it will be required to establish and implement safeguards to protect the member's information.

This commenter requested clarification on whether the proposed rule pertains to corporate credit unions as a ''service provider,'' or as a credit union that must comply with the regulation. The commenter also asked whether there is an exemption for corporate credit unions providing service to natural person credit unions that is part of normal processing business. Natural person credit unions that use corporate credit unions as their ''service providers'' will likely look to the guidelines in overseeing their service provider arrangements with those corporate credit unions. There is no exemption for corporate credit unions that provide services to natural person credit unions as part of normal processing business. NCUA notes that disclosure pursuant to one of the exceptions in the Privacy Rule does not constitute unauthorized access under the guidelines. (*See* II.B. Objectives.).

I.B. Definitions

Paragraph I.B. sets forth the definitions of various terms for purposes of the guidelines. The defined terms have been placed in alphabetical order in the final guidelines.

I.B.1. In General

Paragraph I.B.1. provides that terms used in the guidelines have the same meanings as set forth in 12 CFR part 716, except to the extent that the definition of a term is modified in the guidelines or where the context requires otherwise.

The NCUA and other FFIEC Agencies received several comments on the proposed definitions. NCUA has made certain changes in its final rule as discussed below.

Member (I.B.2.a.)

Proposed paragraph I.B.3. defined ''member'' in the same way as that term is defined in section 716.3(n) of the Privacy Rule. The NCUA proposed to use this definition in the guidelines because section 501(b) refers to safeguarding the security and confidentiality of member information. Given that Congress used the same term for both the 501(b) standards and for the sections concerning financial privacy, NCUA has concluded that it is appropriate to use the same definition in the guidelines that was adopted in the Privacy Rule.

The term ''member'' includes individuals who are not actually members, but are entitled to the same privacy protections under part 716 as members. Examples of individuals that fall within the definition of member in part 716 are nonmember joint account holders, nonmembers establishing an account at a low-income designated credit union, and nonmembers holding an account in a state-chartered credit union under state law. The term ''member'' does not cover business members or consumers who have not established an ongoing relationship with the credit union (e.g., those consumers that merely use an ATM or purchase travelers checks). *See* 12 CFR 716.3(n) and (o).

The NCUA Board solicited comment on whether the definition of member should be broadened to provide a common information security program for all types of records under the control of a credit union. The NCUA received many comments on this definition, almost all of which agreed with the proposed definition. Although a few commenters indicated they would apply the same security program to both business and consumer records, the vast majority of commenters supported the use of the same definition of member in the guidelines as is used in the Privacy Rule. They observed that the use of the term customer in section 501 of the GLB Act, when read in the context of the definitions of consumer and customer relationship in section 509, reflects the Congressional intent to distinguish between certain kinds of consumers for the information security standards and the other privacy provisions established under subtitle A of Title V.

The NCUA believes, therefore, that the most reasonable interpretation of the applicable provisions of subtitle A of Title V of the Act is that a credit union is obligated to protect the security and confidentiality of the nonpublic personal information of its consumers with whom it has a member relationship. As a practical manner, a credit union may also design or implement its information security program in a manner that encompasses the records and information of its other consumers and its business clients.[1]

Member Information (I.B.2.b.)

Section 501(b) refers to safeguarding the security and confidentiality of ''customer information.'' The term ''customer'' is also used in other sections of Title V of the GLB Act. As stated above, the NCUA Board used the term ''member'' in place of the term ''customer'' in implementing these sections of the GLB Act in Part 716.

Proposed paragraph I.B.2. defined member information as any records containing nonpublic personal information, as defined in section 716.3(q) of the Privacy Rule, about a member. This included records, data, files, or other information in paper, electronic, or other form that are maintained by any service provider on behalf of the institution. Although section 501(b) of the GLB Act refers to the protection of both customer records and information, for the sake of simplicity, the proposed guidelines used the term ''member information'' to encompass both information and records.

The NCUA did not receive any comments specifically relating to this definition. The NCUA has adopted a definition of ''member information'' that is substantially the same as the proposed definition. The NCUA has, however, deleted the reference to data, files, or other information from the final guidelines, since each is included in the term ''records'' and also is covered by the reference to ''paper, electronic, or other form.''

Member Information System (I.B.2.c.)

Proposed paragraph I.B.5. defined ''member information system'' to be electronic or physical methods used to access, collect, store, use, transmit, or protect member information. The NCUA did not receive any comments specifically relating to this definition.

The NCUA has adopted the definition of member information system largely as

[1] The NCUA and the other FFIEC Agencies recognize that customer is defined more broadly under Subtitle B of Title V of the Act, which, in general, makes it unlawful for any person to obtain or attempt to obtain customer information of a financial institution by making false, fictitious, or fraudulent statements. For the purposes of that subtitle, the term customer means any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary. (*See* section 527(1) of the Act.) In light of the statutory mandate to prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information (section 525), the NCUA considered modifying these guidelines to cover other customers, namely, business entities and individuals who obtain financial products and services for purposes other than personal, family, or household purposes. The NCUA has concluded, however, that defining member to accommodate the range of objectives set forth in Title V of the Act is unnecessary. Instead, the NCUA has included a new paragraph III.C.1.i, described below, and plan to issue guidance and other revisions to the applicable regulations, as may be necessary, to satisfy the requirements of section 525 of the Act.

proposed. However, the phrase ''electronic or physical'' in the proposal has been deleted because each is included in the term ''any method.'' The NCUA also has added a specific reference to records disposal in the definition of ''member information system.'' This is consistent with the proposal's inclusion of access controls in the list of items a credit union is to consider when establishing security policies and procedures (*see* discussion of paragraph III.C.1.a., below), given that inadequate disposal of records may result in identity theft or other misuse of member information. Under the final guidelines, a credit union's responsibility to safeguard member information continues through the disposal process.

Service Provider (I.B.2.d.)

The proposal defined a ''service provider'' as any person or entity that maintains or processes member information for a credit union, or is otherwise granted access to member information through its provision of services to a credit union. One commenter, a corporate credit union, asked for clarification with regard to ''service provider.''

The NCUA believes that the Act requires each credit union to adopt a comprehensive information security program that is designed to protect against unauthorized access to or use of members' nonpublic personal information. Disclosing information to a person or entity that provides services to a credit union creates additional risks to the security and confidentiality of the information disclosed. In order to protect against these risks, a credit union must take appropriate steps to protect information that it provides to a service provider, regardless of who the service provider is or how the service provider obtains access. The fact that an entity obtains access to member information through, for instance, providing professional services does not obviate the need for the credit union to take appropriate steps to protect the information. Accordingly, the NCUA has determined that, in general, the term ''service provider'' should be broadly defined to encompass a variety of individuals or companies that provide services to the credit union.

This does not mean, however, that a credit union's methods for overseeing its service provider arrangements will be the same for every provider. As explained in the discussion of paragraph III.D., below, a credit union's oversight responsibilities will be shaped by the credit union's analysis of the risks posed by a given service provider. If a service provider is subject to a code of conduct that imposes a duty to protect member information consistent with the objectives of these guidelines, a credit union may take that duty into account when deciding what level of oversight it should provide.

Moreover, a credit union will be responsible under the final guidelines for overseeing its service provider arrangements only when the service is provided directly to the credit union. The NCUA clarified this point by amending the definition of ''service provider'' in the final guidelines to state that it applies only to a person or entity that maintains, processes, or otherwise is permitted access to member information through its provision of services directly to the credit union.

In situations where a service provider hires a subservicer,[2] the subservicer would not be a service provider under the final guidelines. The NCUA recognize that it would be inappropriate to impose obligations on a credit union to select and monitor subservicers in situations where the credit union has no contractual relationship with that person or entity. When conducting due diligence in selecting its service providers (*see* discussion of paragraph III.D., below), however, a credit union must determine that the service provider has adequate controls to ensure that the subservicer will protect the member information in a way that meets the objectives of these guidelines.

II. Standards for Safeguarding Member Information

II.A. Information Security Program

The proposed guidelines described NCUA's expectations for the creation, implementation, and maintenance of an information security program. As noted in the proposal, this program must include administrative, technical, and physical safeguards appropriate to the size and complexity of the credit union and the nature and scope of its activities.

Several interagency commenters representing large organizations were concerned that the term ''comprehensive information security program'' required a single uniform document that must apply to all component parts of the organization. In response, the NCUA and the other FFIEC Agencies note that a program that includes administrative, technical, and physical safeguards will, in many instances, be composed of more than one document. Moreover, use of this term does not require that all parts of an organization implement a uniform program. However, the NCUA will expect a credit union to coordinate all the elements of its information security program. Where the elements of the program are dispersed throughout the credit union, management should be aware of these elements and their locations. If they are not maintained on a consolidated basis, management should have an ability to retrieve the current documents from those responsible for the overall coordination and ongoing evaluation of the program.

II.B. Objectives

Proposed paragraph II.B. described the objectives that each credit union's information security program should be designed to achieve. These objectives tracked the objectives as stated in section 501(b)(1)–(3), adding only that the security program is to protect against unauthorized access that could risk the safety and soundness of the credit union. NCUA's proposed rule also noted that unauthorized access to or use of member information does not include access to or use of member information with the member's consent.

The NCUA Board requested comment on whether there are additional or alternative objectives that should be included in the guidelines. The NCUA received several comments on this proposed paragraph, most of which indicated that the guidelines should not include any additional or alternative objectives.

First, NCUA and the other FFIEC Agencies made two changes to this objective in the final rule. NCUA notes that it does not believe the statute mandates a standard of absolute liability for a credit union that experiences a security breach. Thus, the NCUA and other FFEIC Agencies have clarified these objectives in the final rule by stating that each security program is to be designed to accomplish the objectives stated.

Second, in response to comments that objected to the addition of the safety and soundness standard, the NCUA and other FFIEC Agencies have deleted that reference in order to make the statement of objectives identical to the objectives identified in the statute. NCUA believes that risks to the safety and soundness of a credit union may be addressed through other supervisory or regulatory means, making it unnecessary to expand the statement of objectives in this rulemaking.

NCUA notes that for purposes of the guidelines, access to or use of member

[2] The term subservicer means any person who has access to a credit union's member information through its provision of services to the service provider and is not limited to mortgage subservicers.

information is permitted if it is done with the member's consent. When a member gives consent to a third party to access or use that member's information, such as by providing the third party with an account number, PIN, or password, the guidelines do not require the credit union to know about the arrangement or to monitor the use or redisclosure of the member's information by the third party. Finally, unauthorized access does not mean disclosure pursuant to one of the exceptions in the Privacy Rule.

III. Development and Implementation of Information Security Program

III.A. Involve the Board of Directors

Proposed paragraph III.A. described the involvement of the board of directors and management in the development and implementation of an information security program. As explained in the proposal, the board of director's responsibilities are to: (1) Approve the credit union's written information security policy and program; and (2) oversee efforts to develop, implement, and maintain an effective information security program, including reviewing reports from management. The proposal also outlined management's responsibilities for developing, implementing, and maintaining the security program. The NCUA did not receive any comments specifically relating to the requirement of board approval of the information security program.

NCUA believes that a credit union's overall information security program is critical to the safety and soundness of the credit union. Therefore, the final guidelines continue to place responsibility on a credit union's board of directors to approve and exercise general oversight over the program. However, the guidelines allow the entire board of directors of a credit union, or an appropriate committee of the board of directors to approve the credit union's written security program. In addition, the guidelines permit the board of directors to assign specific implementation responsibilities to a committee or an individual.

In those cases where a committee is established, NCUA considered requiring that the committee contain at least one member of the credit union's board of directors. Conversely, the NCUA also evaluated the impact of not allowing a member of the board of directors to serve on the committee. In both scenarios, NCUA determined the most logical approach is to allow each credit union board to determine the makeup of such a committee if established. To mandate additional requirements on the board of directors may place undue burden on small credit unions with a limited number of resources.

The NCUA received comments suggesting that use of the term ''oversee'' conveyed the notion that a board of directors is expected to be involved in day-to-day monitoring of the development, implementation, and maintenance of an information security program. The term ''oversee'' is meant to convey a board of director's conventional supervisory responsibilities. Day-to-day monitoring of any aspect of an information security program is a management responsibility. The final guidelines reflect this by providing that the board of directors must oversee the credit union's information security program, but may assign specific responsibility for its implementation.

The NCUA invited comment on whether the guidelines should require that the board of directors designate an Information Security Officer or other responsible individual who would have the authority, subject to the board's approval, to develop and administer the credit union's information security program. The NCUA received a few comments suggesting that the NCUA should not require the creation of a new position for this purpose. Only one commenter supported designating an Information Security Officer. Some commenters also stated that hiring one or more additional staff for this purpose would impose a significant burden.

NCUA believes that a credit union will not need to create a new position with a specific title for this purpose, as long as the credit union has adequate staff in light of the risks that credit union faces to its member information. Regardless of whether new staff are added, the lines of authority for development, implementation, and administration of a credit union's information security program need to be well-defined and clearly articulated.

The proposed guidelines set forth three responsibilities for management as part of its implementation of the credit union's information security program. They were to: (1) evaluate the impact on a credit union's security program of changing business arrangements and changes to member information systems; (2) document compliance with these guidelines; and (3) keep the board of directors informed of the current status of the credit union's information security program. In response to this proposal, some commenters stated that the NCUA should allow a credit union to decide who within the institution is to carry out the tasks.

The NCUA believes that a credit union's board of directors is in the best position to determine who should be assigned specific roles in implementing the credit union's security program. Accordingly, the NCUA has deleted the separate provision assigning specific roles to management. The responsibilities that were contained in this provision are now included in other paragraphs of the guidelines.

III.B. Assess Risk

Proposed paragraph III.B. described the risk assessment process that should be used in the development of the information security program. Under the proposal, a credit union was to identify and assess the risks to member information. As part of that assessment, the credit union was to determine the sensitivity of the information and the threats to the credit union's systems. A credit union also was to assess the sufficiency of its policies, procedures, systems, and other arrangements in place to control risk. Finally, a credit union was to monitor, evaluate, and adjust its risk assessment in light of changes in areas identified in the proposal.

The NCUA did not receive any comments specifically relating this section of the proposed rule. However, the other FFIEC Agencies received several comments on these provisions. Accordingly, NCUA has amended its final rule to remain as consistent as practicable with the other Agencies.

Discussions with the other FFIEC Agencies focused on the issue of requiring credit unions to perform a sensitivity analysis as part of their risk assessment. NCUA is aware that ''member information'' is defined to mean ''nonpublic personal information'' as defined in the GLB Act, and that the GLB Act provides the same level of coverage for all nonpublic personal information.

While the NCUA agrees that all member information requires protection, the NCUA believes that requiring all credit unions to afford the same degree of protection to all member information may be unnecessarily burdensome in many cases. Accordingly, the final guidelines continue to state that credit unions should take into consideration the sensitivity of member information. Disclosure of certain information (such as account numbers or access codes) might be particularly harmful to members if the disclosure is not authorized. Individuals who try to breach the credit union's security systems may be likely to target this type of information. When such information

is housed on systems that are accessible through public telecommunications networks, it may require more and different protections, such as encryption, than if it were located in a locked file drawer. To provide flexibility to respond to these different security needs in the way most appropriate, the guidelines confer upon credit unions the discretion to determine the levels of protection necessary for different categories of information. Credit unions may treat all member information the same, provided that the level of protection is adequate for all the information.

In addition, the NCUA and the other FFEIC Agencies believe that the security program should be focused on reasonably foreseeable risks. Therefore, NCUA has amended its final guidelines accordingly.

NCUA has made several other changes to this paragraph in the final rule to improve the order of the guidelines and to eliminate provisions that were redundant in light of responsibilities outlined elsewhere. For instance, while the proposal stated that the risk assessment function included the need to monitor for relevant changes to technology, sensitivity of member information, and threats to information security and make adjustments as needed, that function has been incorporated into the discussion of managing and controlling risk in paragraphs III.C.3. and III.E.

Thus, under the final guidelines as adopted, a credit union should identify the reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of member information or member information systems. Next, the risk assessment should consider the potential damage that a compromise of member information from an identified threat would have on the member information, taking into consideration the sensitivity of the information to be protected in assessing the potential damage. Finally, a credit union should conduct an assessment of the sufficiency of existing policies, procedures, member information systems, and other arrangements intended to control the risks it has identified.

(III.C.) Manage and Control Risk

Proposed paragraph III.C. described the steps a credit union should take to manage and the control risks identified in paragraph III.B.

Establish policies and procedures. Paragraph III.C.1 of the proposal described the elements of a comprehensive risk management plan designed to control identified risks and to achieve the overall objective of ensuring the security and confidentiality of member information. It identified 11 factors a credit union should consider in evaluating the adequacy of its policies and procedures to effectively manage these risks.

The NCUA did not receive any comments specifically relating to this section. However, based on interagency discussions, the NCUA has amended the final guidelines to state that each credit union must consider whether the security elements discussed in paragraphs III.C.1.a.-h. are appropriate for the credit union and, if so, adopt those elements a credit union concludes are appropriate. The NCUA believes that the security measures listed in III.C.I may be adapted by credit unions of varying sizes, scope of operations, and risk management structures. Consistent with that approach, the manner of implementing a particular element may vary from credit union to credit union. For example, while a credit union that offers Internet-based transaction accounts may conclude that encryption is appropriate, a different credit union that processes all data internally and does not have a transactional web site may consider other kinds of access restrictions that are adequate to maintain the confidentiality of member information.

The NCUA Board invited comment on the degree of detail that should be included in the guidelines regarding the risk management program, including which elements should be specified in the guidelines, and any other components of a risk management program that should be listed. Generally, the comments supported the level of detail conveyed in the proposed guidelines. The NCUA has adopted the provision regarding management and control of risks with the changes discussed below. Comments addressing proposed security measures that have been adopted without change also are discussed below.

Access rights. The NCUA did not receive any comments specifically addressing this area. However, because the other FFIEC Agencies received a number of comments suggesting that the reference to ''access rights to customer information'' in paragraph III.C.1.a. of their proposal could be interpreted to mean providing customers with a right of access to financial information. NCUA notes that the reference was intended to refer to limitations on employee access to member financial information, not to member access to information. However, this element has been deleted since limitations on employee access are covered adequately in other parts of paragraph III.C.1. (*See* discussion of ''access controls'' in paragraph III.C.1.a. of the final guidelines.)

Access controls. Paragraph III.C.1.b. of the proposed rule required a credit union to consider appropriate access controls when establishing its information security policies and procedures. These controls were intended to address unauthorized access to a credit union's member information by anyone, whether or not employed by the credit union.

The NCUA believes that this element sufficiently addresses the concept of unauthorized access, regardless of who is attempting to obtain access. This would cover, for instance, attempts through pretext calling to gather information about a credit union's members.[3] The NCUA has amended the final rule to refer specifically to pretext calling in new III.C.1.a. The NCUA does not intend for the final guidelines to require a credit union to provide its members with access to information the credit union has gathered. Instead, the provision in the final guidelines addressing access is limited solely to the issue of preventing unauthorized access to member information.

In accord with the other FFIEC agencies, the NCUA has deleted the reference in the proposed paragraph III.C.1.b. to providing access to authorized companies. The final guidelines require a credit union to consider the need for access controls in light of the credit union's various member information systems and adopt such controls as appropriate.

Dual control procedures. Paragraph III.C.1.f. of the proposed rule stated that credit unions should consider dual control procedures, segregation of duties, and employee background checks for employees with responsibility for, or access to, member information. Most of the interagency comments on this paragraph focused on ''dual control procedures'', which refers to a security technique that uses two or more persons operating together to protect sensitive information. Both persons are equally responsible for protecting the information and neither can access the information alone.

The NCUA recognizes that dual-control procedures are not necessary for all activities, but might be appropriate for higher-risk activities. Given that the guidelines state only that a credit union should consider dual control procedures

[3] Pretext calling is a fraudulent means of obtaining an individual's personal information by posing as that individual.

and adopt only if appropriate for that credit union, the NCUA has retained a reference to dual control procedures in the items to be considered (paragraph III.C.I.e.).

Oversight of servicers. Paragraph III.C.1.g. of the proposal was deleted. Instead, the final guidelines consolidate the provisions related to service providers in paragraph III.D.

Physical hazards and technical failures. The paragraphs of the proposed guidelines addressing protection against destruction due to physical hazards and technological failures (paragraphs III.C.1.j. and k., respectively, of the proposal) have been consolidated in paragraph III.C.1.h. of the final guidelines. The NCUA believes that this change improves clarity and recognizes that disaster recovery from environmental and technological failures often involve the same considerations.

Training. Paragraph III.C.2. of the proposed guidelines provided that a credit union's information security program should include a training component designed to train employees to recognize, respond to, and report unauthorized attempts to obtain member information. NCUA did not receive any comments specific to this section. However, for purposes of these guidelines, the NCUA believes that, as part of a training program, staff should be made aware both of federal reporting requirements and a credit union's procedures for reporting suspicious activities, including attempts to obtain access to member information without proper authority.

Therefore, the final guidelines amend the provision governing training to state that a credit union's information security program should include a training component designed to implement the credit union's information security policies and procedures. The NCUA believes that the appropriate focus for the training should be on compliance with the credit union's security program generally and not just on the limited aspects identified in proposed III.C.2. The provisions governing reporting have been moved to paragraph III.C.1.g., which addresses response programs in general.

Testing. Paragraph III.C.3. of the proposed guidelines provided that an information security program should include regular testing of key controls, systems, and procedures. The proposal provided that the frequency and nature of the testing should be determined by the risk assessment and adjusted as necessary to reflect changes in both internal and external conditions. The proposal also provided that the tests are to be conducted, where appropriate, by independent third parties or staff independent of those that develop or maintain the security program. Finally, the proposal stated that test results are to be reviewed by independent third parties or staff independent of those that conducted the test. The NCUA Board requested comment on whether specific types of security tests, such as penetration tests or intrusion detections tests, should be required.

The most frequent comment regarding testing of key controls was that the NCUA should not require specific tests. Commenters noted that because technology changes rapidly, the tests specified in the guidelines will become obsolete and other tests will become the standard. Consequently, according to these commenters, the guidelines should identify areas where testing may be appropriate without requiring a credit union to implement a specific test or testing procedure. Several commenters noted that periodic testing of information security controls is a sound idea and is an appropriate standard for inclusion in these guidelines.

The NCUA believes that a variety of tests may be used to ensure the controls, systems, and procedures of the information security program work properly and also recognize that such tests will progressively change over time. The NCUA believes that the particular tests that may be applied should be left to the discretion of management rather than specified in advance in these guidelines. Accordingly, the final guidelines do not require a credit union to apply specific tests to evaluate the key control systems of its information security program.

The NCUA Board also invited comment regarding the appropriate degree of independence that should be specified in the guidelines in connection with the testing of information security systems and the review of test results. The proposal asked whether the tests or reviews of tests be conducted by persons who are not employees of the credit union. The proposal also asked whether employees may conduct the testing or may review test results, and what measures, if any, are appropriate to assure their independence.

Some commenters interpreted the proposal as almost requiring three separate teams of people to provide sufficient independence to control testing: one team to operate the system; a second team to test the system; and a third team to review test results. This approach, they argued, would be too burdensome and expensive to implement. The NCUA believes that the critical need for independence is between those who operate the systems and those who either test them or review the test results. Therefore, the final guidelines now require that tests should be conducted or reviewed by persons who are independent of those who operate the systems, including the management of those systems.

Whether a credit union should use third parties to either conduct tests or review their results depends upon a number of factors. Some credit unions may have the capability to thoroughly test certain systems in-house and review the test results but will need the assistance of third party testers to assess other systems. For example, a credit union's internal audit department may be sufficiently trained and independent for the purposes of testing certain key controls and providing test results to decision makers independent of system managers. Some testing may be conducted by third parties in connection with the actual installation or modification of a particular program. In each instance, management needs to weigh the benefits of testing and test reviews by third parties against its own resources in this area, both in terms of expense and reliability.

Ongoing adjustment of program. Paragraph III.C.4. of the proposal required a credit union to monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its member information, and internal or external threats to information security. This provision was previously located in the paragraph titled ''Manage and Control Risk.'' While there were no comments on this provision, the NCUA clarifies that this provision is applicable to a credit union's entire information security program. Therefore, this provision is now separately identified as new paragraph III.E. of the final guidelines, discussed below.

III.D. Oversee Service Provider Arrangements

NCUA's proposal addressed service providers in two provisions. The NCUA provided that a credit union should consider contract provisions and oversight mechanisms to protect the security of member information maintained or processed by service providers as one of the elements to be considered in establishing risk management policies and procedures (proposed paragraph III.C.1.g.). Additionally, proposed paragraph III.D. provided that, when a credit union uses an outsourcing arrangement, the credit

union would continue to be responsible for safeguarding member information that it gives to the service provider. That proposed paragraph also provided that the credit union must use due diligence in managing and monitoring the outsourcing arrangement to confirm that its service providers would protect member information consistent with these guidelines.

The NCUA Board requested comment on the appropriate treatment of outsourcing arrangements, such as, whether industry best practices are available regarding effective monitoring of service provider security precautions, whether service providers accommodate requests for specific contract provisions regarding information security, and, to the extent that service providers do not accommodate these requests, whether credit unions implement effective security programs. The NCUA Board also requested comment on whether credit unions would find it helpful if the guidelines contained specific contract provisions requiring service provider performance standards in connection with the security of member information.

NCUA did not receive any comments relating to examples of best practices. However, given the varying complexity and level of services offered by credit unions, there could be a variety of best industry practices. The NCUA and other FFIEC Agencies recognize that information security practices are likely to evolve rapidly, and thus believe that it is inappropriate to include best practices in the final guidelines.

The majority of commenters opposed the NCUA providing specific contract provisions in the guidelines. One commenter cautioned the NCUA in crossing the boundary between regulator and manager in this area. Commenters also indicated that requiring specific contract provisions would not be consistent with the development of flexible guidelines and recommended against the inclusion of specific provisions.

The NCUA believes that credit unions should enter into appropriate contracts, but also believe that these contracts, alone, are inadequate. Therefore, the final guidelines, in paragraph III.D., include provisions relating to selecting, contracting with, and monitoring service providers.

The final guidelines require that a credit union exercise appropriate due diligence in the selection of service providers. Due diligence should include a review of the measures taken by a service provider to protect member information. As previously noted in the discussion of ''service provider,'' it also should include a review of the controls the service provider has in place to ensure that any subservicer used by the service provider will be able to meet the objectives of these guidelines.

The final guidelines also require that a credit union have a contract with each of its service providers that requires each provider to implement appropriate measures designed to meet the objectives of these guidelines (as stated in paragraph II.B.). This provision does not require a service provider to have a security program in place that complies with each paragraph of these guidelines. Instead, by stating that a service provider's security measures need only achieve the objectives of these guidelines, the guidelines provide flexibility for a service provider's information security measures to differ from the program that a credit union implements. The NCUA has provided a two-year transition period during which credit unions may bring their outsourcing contracts into compliance. (See discussion of paragraph III.F.) NCUA has not included model contract language, because of the belief that the precise terms of service contracts are best left to the parties involved.

Each credit union must also exercise an appropriate level of oversight over each of its service providers to confirm that the service provider is implementing the provider's security measures. The NCUA has amended the guidelines as proposed to include greater flexibility with regard to the monitoring of service providers. A credit union need only monitor its outsourcing arrangements if such oversight is indicated by a credit union's own risk assessment. NCUA recognizes that not all outsourcing arrangements will need to be monitored in the same fashion. Some service providers will be financial institutions that are directly subject to these guidelines or other standards promulgated by their primary regulator under section 501(b). Other service providers may already be subject to legal and professional standards that require them to safeguard the credit union's member information. Therefore, the final guidelines permit a credit union to do a risk assessment taking these factors into account and determine for themselves which service providers will need to be monitored.

Even where monitoring is warranted, the guidelines do not require on-site inspections. Instead, the guidelines state that this monitoring can be accomplished, for example, through the periodic review of the service provider's associated audits, summaries of test results, or equivalent measures of the service provider. NCUA expects that credit unions will arrange, when appropriate, through contracts or otherwise, to receive copies of audits and test result information sufficient to assure the credit union that the service provider implements information security measures that are consistent with its contract provisions regarding the security of member information. The American Institute of Certified Public Accountants Statement of Auditing Standards No. 70, captioned ''Reports on the Processing of Transactions by Service Organizations'' (SAS 70 report), is one commonly used external audit tool for service providers. Information contained in an SAS 70 report may enable a credit union to assess whether its service provider has information security measures that are consistent with representations made to the credit union during the service provider selection process.

III.E. Adjust the Program

Paragraphs III.B.3 and III.C.4. of the proposed rule both addressed a credit union's obligations when circumstances change. Both paragraph III.B.3. (which set forth management's responsibilities with respect to its risk assessment) and paragraph III.C.4. (which focused on the adequacy of a credit union's information security program) identified the possible need for changes to a credit union's program in light of relevant changes to technology, the sensitivity of member information, and internal or external threats to information security.

NCUA received no comments objecting to these paragraphs' statement of the need to adjust a credit union's program as circumstances change. While the NCUA Board has not changed the substance of these provisions in the final guidelines, it has, however, made a stylistic change to simplify the guidelines. The final guidelines combine, in paragraph III.E., the provisions previously stated separately. Consistent with the proposal, this paragraph provides that each credit union must monitor, evaluate, and adjust its information security program in light of relevant changes in technology, the sensitivity of its member information, internal or external threats to information, and the credit union's own changing business arrangements. This would include an analysis of risks to member information posed by new technology (and any needed program adjustments) before a credit union adopts the technology in order to determine whether a security program remains adequate in light of the new risks presented.

III.F. Report to the Board

Paragraph III.A.2.c. of the proposal set out management's responsibilities for reporting to its board of directors. As previously discussed, the final guidelines have removed specific requirements for management, but instead allow a credit union to determine who within the organization should carry out a given responsibility. The board of directors reporting requirement thus has been amended to require that a credit union report to its board of directors, and that this report be at least annually. Paragraph III.F. of the final guidelines sets out this requirement.

The NCUA Board invited comment regarding the appropriate frequency of reports to the board of directors, including whether reports should be monthly, quarterly, or annually. The NCUA and the other FFIEC Agencies received a number of comments recommending that no specific frequency be mandated by the guidelines and that each financial institution be permitted to establish its own reporting period. Several commenters stated that if a reporting period is required, then it should be not less than annually unless some material event triggers the need for an interim report.

The NCUA expects that in all cases, management will provide its board of directors (or the appropriate board committee) a written report on the information security program consistent with the guidelines at least annually. Management of credit unions with more complex information systems may find it necessary to provide information to the board of directors (or a committee) on a more frequent basis. Similarly, more frequent reporting will be appropriate whenever a material event affecting the system occurs or a material modification is made to the system. NCUA expects the content of these reports will vary for each credit union, depending on the nature and scope of its activities as well as the different circumstances that it will confront as it implements and maintains the program.

III.G. Implement the Standards

NCUA has added paragraph III.G. to the final rule to describe the timing requirements for implementing these standards. Each credit union should take appropriate steps to fully implement an information security program pursuant to these guidelines by July 1, 2001. This date is consistent with the Privacy Rule and the other FFIEC Agencies.

The NCUA believes that the dates for full compliance with these guidelines and the Privacy Rule should coincide. Credit unions are required, as part of their privacy notices, to disclose their policies and practices with respect to protecting the confidentiality and security of nonpublic personal information. *See* 12 CFR 716.6(a)(8). NCUA has provided in the Appendix to its Privacy Rule that a credit union may satisfy this disclosure requirement by advising its members that the credit union maintains physical, electronic, and procedural safeguards that comply with federal standards to guard members' nonpublic personal information. *See* Appendix A–7. The NCUA believes that this disclosure will be meaningful only if the final guidelines are effective when the disclosure is made. If the effective date of these guidelines is extended beyond July 1, 2001, then a credit union may be placed in the position of providing an initial notice regarding confidentiality and security and thereafter amending the privacy policy to accurately refer to the federal standards once they became effective. For these reasons, the NCUA and other FFIEC Agencies have retained July 1, 2001, as the effective date for the guidelines.

However, the NCUA and the other FFIEC Agencies have included a transition rule for contracts with service providers. The transition rule, which parallels a similar provision in the Privacy Rule, provides a two-year period for grandfathering existing contracts. Thus a contract entered into on or before the date that is 30 days after publication of the final guidelines in the **Federal Register** satisfies the provisions of this part until July 1, 2003, even if the contract does not include provisions delineating the servicer's duties and responsibilities to protect member information described in paragraph III.D.

NCUA intends to maintain its 90-day compliance period for newly-chartered or insured credit unions found in § 748.0(a). This section requires that each credit union establish its written security program within 90 days from the date of insurance. While the GLB Act and the other FFIEC Agencies' regulations are silent as to compliance for newly chartered or insured institutions, NCUA believes it is reasonable to continue to provide this compliance time frame for such credit unions.

IV. Regulatory Procedures

A. Paperwork Reduction Act

The NCUA Board has submitted the reporting requirements in this final rule to the Office of Management and Budget (OMB) and is awaiting approval and revised issuance of OMB control number 3133–0053.

The Paperwork Reduction Act and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invited comment on: (1) whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimate on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Only two commenters provided feedback on this issue. One indicated the 40-hour estimate may be too burdensome for smaller credit unions and NCUA should consider minimum standards for smaller credit unions based on their sophistication, resources, and complexity. The other commenter stated that the 40-hour estimate was too low and suggested it be twice as long.

The NCUA believes these guidelines do represent minimum standards for protecting member information and are consistent with current practices among most credit unions. NCUA believes the changes made to the final rule enhance its flexibility for small credit unions, based on their own risk assessment and complexity of services. While NCUA recognizes that it may take some credit unions longer than 40 hours, the estimate is based on the average number of hours. Therefore, NCUA is retaining the 40-hour estimate.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires, subject to certain exceptions, that NCUA prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act, and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. *See* 12 CFR 791.8(a). NCUA's final rule will apply to approximately 1,624 small credit unions.

At the time of issuance of the proposed rule, NCUA could not make a determination for certification. Therefore, NCUA issued an IRFA pursuant to section 603 of the Regulatory Flexibility Act. After reviewing the comments submitted in response to the proposed rule, the NCUA certifies that this final rule for establishing guidelines for safeguarding member information will not have a significant economic impact on a substantial number of small entities.

Two commenters specifically responded to this issue. Both indicated that the guidelines may be too burdensome for small credit unions, and suggested that a different set of standards should apply to small credit unions whose member information is not accessible to the outside to reduce the burden and paperwork. The comment letters do not provide the NCUA data to quantify the costs of implementing the requirements of the final guidelines.

The NCUA anticipates the compliance costs will vary across credit unions. However, safeguarding member information is a vital aspect of the ongoing business operations of all credit unions. The potential cost to a credit union's reputation caused by lack of member confidence necessitates secure systems for a credit union to remain competitive.

The final guidelines implement the provisions of Title V, Subtitle A, section 501 of the GLB and apply to all financial institutions. The NCUA has attempted to minimize any significant economic impact on a larger number of small credit unions. This final rulemaking does not substantively change existing statutory requirements or represent any change in the policies of the NCUA, but provides appropriate standards relating to the security and confidentiality of member records. Nor do the final guidelines substantively change existing information system guidance. The final guidelines were designed to be consistent with security-related supervisory guidance previously issued by the NCUA and the FFIEC.

Consequently, the NCUA believes these guidelines represent minimum standards for protecting member information and are consistent with current practices among most credit unions. Further, NCUA believes the changes made to the final rule enhance its flexibility for small credit unions, based on their own risk assessment and complexity of services. For these reasons the final guidelines will not have a significant economic impact on a substantial number of small credit unions, and a final regulatory flexibility analysis is not required.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule applies to all federally-insured credit unions, but it does not have 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. NCUA has determined the final rule and appendix does not constitute a policy that has federalism implications for purposes of the executive order.

D. Treasury and General Government Appropriations Act, 1999

NCUA has determined that the proposed rule and appendix will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA is recommending to the OMB that it determine that this is not a major rule, and awaits its determination.

V. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burden. No commenters addressed this particular request for comments.

List of Subjects in 12 CFR Part 748

Credit unions, Crime, Currency, Reporting and recordkeeping requirements and Security measures.

By the National Credit Union Administration Board on January 18, 2001.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, the NCUA Board amends 12 CFR part 748 as follows:

PART 748—SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE.

1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311.

2. Heading for Part 748 is revised as set forth above.

3. In § 748.0 revise paragraph (b) to read as follows:

§ 748.0 Security program.

* * * * *

(b) The security program will be designed to:

(1) Protect each credit union office from robberies, burglaries, larcenies, and embezzlement;

(2) Ensure the security and confidentiality of member records, protect against anticipated threats or hazards to the security or integrity of such records, and protect against unauthorized access to or use of such records that could result in substantial harm or serious inconvenience to a member;

(3) Assist in the identification of persons who commit or attempt such actions and crimes; and

(4) Prevent destruction of vital records, as defined in 12 CFR part 749.

4. Add Appendix A to part 748 to read as follows:

Appendix A to Part 748—Guidelines for Safeguarding Member Information

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I. Introduction

The Guidelines for Safeguarding Member Information (Guidelines) set forth standards pursuant to sections 501 and 505(b), codified at 15 U.S.C. 6801 and 6805(b), of the Gramm-Leach-Bliley Act. These Guidelines provide guidance standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of member information.

A. *Scope.* The Guidelines apply to member information maintained by or on behalf of

federally-insured credit unions. Such entities are referred to in this appendix as ''the credit union.''

B. *Definitions.* 1. *In general.* Except as modified in the Guidelines or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in 12 CFR part 716.

2. For purposes of the Guidelines, the following definitions apply:

a. *Member* means any member of the credit union as defined in 12 CFR 716.3(n).

b. *Member information* means any records containing nonpublic personal information, as defined in 12 CFR 716.3(q), about a member, whether in paper, electronic, or other form, that is maintained by or on behalf of the credit union.

c. *Member information system* means any method used to access, collect, store, use, transmit, protect, or dispose of member information.

d. *Service provider* means any person or entity that maintains, processes, or otherwise is permitted access to member information through its provision of services directly to the credit union.

II. Standards for Safeguarding Member Information

A. *Information Security Program.* A comprehensive written information security program includes administrative, technical, and physical safeguards appropriate to the size and complexity of the credit union and the nature and scope of its activities. While all parts of the credit union are not required to implement a uniform set of policies, all elements of the information security program must be coordinated.

B. *Objectives.* A credit union's information security program should be designed to: ensure the security and confidentiality of member information; protect against any anticipated threats or hazards to the security or integrity of such information; and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any member. Protecting confidentiality includes honoring members' requests to opt out of disclosures to nonaffiliated third parties, as described in 12 CFR 716.1(a)(3).

III. Development and Implementation of Member Information Security Program

A. *Involve the Board of Directors.* The board of directors or an appropriate committee of the board of each credit union should:

1. Approve the credit union's written information security policy and program; and

2. Oversee the development, implementation, and maintenance of the credit union's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.

B. *Assess Risk.* Each credit union should:

1. Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of member information or member information systems;

2. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of member information; and

3. Assess the sufficiency of policies, procedures, member information systems, and other arrangements in place to control risks.

C. *Manage and Control Risk.* Each credit union should:

1. Design its information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the credit union's activities. Each credit union must consider whether the following security measures are appropriate for the credit union and, if so, adopt those measures the credit union concludes are appropriate:

a. Access controls on member information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing member information to unauthorized individuals who may seek to obtain this information through fraudulent means;

b. Access restrictions at physical locations containing member information, such as buildings, computer facilities, and records storage facilities to permit access only to authorized individuals;

c. Encryption of electronic member information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;

d. Procedures designed to ensure that member information system modifications are consistent with the credit union's information security program;

e. Dual controls procedures, segregation of duties, and employee background checks for employees with responsibilities for or access to member information;

f. Monitoring systems and procedures to detect actual and attempted attacks on or intrusions into member information systems;

g. Response programs that specify actions to be taken when the credit union suspects or detects that unauthorized individuals have gained access to member information systems, including appropriate reports to regulatory and law enforcement agencies; and

h. Measures to protect against destruction, loss, or damage of member information due to potential environmental hazards, such as fire and water damage or technical failures.

2. Train staff to implement the credit union's information security program.

3. Regularly test the key controls, systems and procedures of the information security program. The frequency and nature of such tests should be determined by the credit union's risk assessment. Tests should be conducted or reviewed by independent third parties or staff independent of those that develop or maintain the security programs.

D. *Oversee Service Provider Arrangements.* Each credit union should:

1. Exercise appropriate due diligence in selecting its service providers;

2. Require its service providers by contract to implement appropriate measures designed to meet the objectives of these guidelines; and

3. Where indicated by the credit union's risk assessment, monitor its service providers to confirm that they have satisfied their obligations as required by paragraph D.2. As part of this monitoring, a credit union should review audits, summaries of test results, or other equivalent evaluations of its service providers.

E. *Adjust the Program.* Each credit union should monitor, evaluate, and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its member information, internal or external threats to information, and the credit union's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to member information systems.

F. *Report to the Board.* Each credit union should report to its board or an appropriate committee of the board at least annually. This report should describe the overall status of the information security program and the credit union's compliance with these guidelines. The report should discuss material matters related to its program, addressing issues such as: risk assessment; risk management and control decisions; service provider arrangements; results of testing; security breaches or violations and management's responses; and recommendations for changes in the information security program.

G. *Implement the Standards.*

1. *Effective date.* Each credit union must implement an information security program pursuant to the objectives of these Guidelines by July 1, 2001.

2. *Two-year grandfathering of agreements with service providers.* Until July 1, 2003, a contract that a credit union has entered into with a service provider to perform services for it or functions on its behalf satisfies the provisions of paragraph III.D., even if the contract does not include a requirement that the servicer maintain the security and confidentiality of member information, as long as the credit union entered into the contract on or before March 1, 2001.

[FR Doc. 01–2494 Filed 1–29–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM182; Special Conditions No. 25–172–SC]

Special Conditions: Honeywell International, Inc.; Boeing Model 747–300 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 747–300 series airplanes modified by Honeywell

International, Inc. These modified airplanes will have novel or unusual design features associated with the installation of new navigation management system that includes electronic flight instrument system (EFIS) displays. The EFIS displays will use electrical and electronic systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is January 16, 2001. Comments must be received on or before March 1, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM182, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at that address. All comments must be marked: ''Docket No. NM182.'' Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information concerning the certification program for the Boeing Model 747–300 series airplanes modified by Honeywell International, Inc., contact: Ross Landes, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–145; fax (425) 227–1149.

For information on the general subject of HIRF, contact: Massoud Sadeghi, Federal Aviation Administration, Transport Airplane Directorate, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2117; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although these special conditions are being issued as final special conditions without prior public notice, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to NM182.'' The postcard will be date stamped and returned to the commenter.

Background

On October 20, 2000, Honeywell International Inc., 15001 N.E. 36th Street, P.O. Box 97001, Redmond, Washington 98073–9701, applied for a Supplemental Type Certificate (STC) for the Boeing Model 747–300 series airplanes operated by South African Airways (SAA). Honeywell plans to install upgraded avionics equipment on these airplanes. This equipment includes an electronic flight instrument system (EFIS) that displays attitude and heading information, and is manufactured by Astronautics. The modified airplanes are scheduled for certification in January 2001.

The Astronautics EFIS provides a critical function that displays attitude and heading information. The EFIS must be designed and installed to ensure that its operation is not adversely affected by high intensity radiated fields (HIRF). These functions can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by HIRF external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

The subject Boeing Model 747–300 series airplanes are four-engine transport category airplanes with a wingspan of 195 ft. 8 in. (59.6 m) and an overall length of 231 ft. 10.2 in. (70.6 m). They are essentially identical to the earlier Model 747–200 series, but have a stretched upper deck. Their maximum takeoff weight is 833,000 lbs. (374,850 kg) and typical cruise speed at 35,000 feet is Mach 0.85/565 mph (910 km/h)

Type Certification Basis

Under the provisions of 14 CFR 21.101, Honeywell must show that the Boeing Model 747–300 series airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the modification. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A20WE for the Boeing Model 747–300 series airplanes are as follows:

1. Regulations

- 14 CFR parts 1, 21, 34 (fuel vent and exhaust emission requirements), and 36 (noise certification requirements).
- 14 CFR part 25, effective February 1, 1965.
- Amendments 25–1 through 25–8, plus 25–15, 25–17, 25–18, 25–20, and 25–39 (transmitted by FAA letter dated February 4, 1977).
- Amendment 25–36, re: RB211 engine oil filter system compliance with § 25.1019 and § 25.1305(c)(7).
- Amendment 25–46, § 25.803(d) (Transmitted by FAA letter to The Boeing Company, dated September 2, 1983. This is limited to all passenger configurations and 6/7 palet combi configurations.)

2. Special Conditions

- Special conditions summarized for record purposes as enclosed with FAA letter to The Boeing Company dated February 20, 1970.
- Special Conditions 4A, revised to apply to airplanes with the landing gear load evener system deleted (recorded as attachment to an FAA letter to The Boeing Company dated May 12, 1971).
- Special Conditions No. 25–61–NW–1 for occupancy not to exceed 32 passengers on the upper deck of airplanes with spiral staircase

(transmitted to The Boeing Company by FAA letter dated February 26, 1975).

• Special Conditions No. 25–71–NW–3 for occupancy not to exceed 45 passengers on the upper deck of airplanes with straight segmented stairway (transmitted to The Boeing Company by FAA letter dated September 8, 1976).

• Modification of Special Conditions No. 25–71–NW–3 for occupancy not to exceed 110 passengers on the upper deck of airplanes with segmented stairway (transmitted to The Boeing Company by FAA letter dated August 3, 1981).

• Special Conditions No. 25–77–NW–4—modification of the autopilot system to approve the airplane for use of the system under category IIIb landing conditions (transmitted to The Boeing Company by FAA letter dated July 8, 1977).

• Special Condition No. 25–ANM–16 for installation of an overhead crew rest area, occupancy not to exceed 10 crewmembers. (The FAA-approved procedures required for compliance with paragraph 13 of the Special Condition are located in Boeing Document D926U303, Appendix D.)

3. Exemptions From 14 CFR Part 25

• Exemption No. 1013A, dated December 24, 1969.

• Exemption No. 1870D, dated April 3, 1991.

• Exemption No. 3035 dated September 9, 1980.

4. Compliance With the Following Optional Requirements

• § 25.801, ''Ditching.''

• § 25.1419, ''Ice protection.''

5. Equivalent Safety Findings With Respect to the Following Regulations

• § 25.773(b)(2)(i), amendments 25–1 through 25–67, ''Pilot compartment view.''

• § 25.811(f), ''Emergency exit marking.''

• § 25.812(k)(2), ''Emergency lighting.''

• § 25.815, ''Width of aisle.''

• § 25.1415(d) ''Ditching equipment'' [re: Emergency Locator Transmitter (ELT)].

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–300 series airplanes modified by Honeywell because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.19, as required by § 11.38, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

The special conditions approved in this new document will form an additional part of the type certification basis for these airplanes.

Special conditions are initially applicable to the model for which they are issued. Should Honeywell apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747–300 series airplanes modified by Honeywell will incorporate the Astronautics EFIS system, which performs critical functions. The EFIS system contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. This system may be vulnerable to HIRF external to the airplane. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses the requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 747–300 airplanes modified by Honeywell to include the Astronautics EFIS system. These special conditions will require that this system, which performs critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, and the use of composite material in the airplane structure, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1. or, alternatively, paragraph 2., below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

Or

2. A threat external to the airframe for both of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from *Table 1* are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified in *Table 1* are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–300 series airplanes modified by Honeywell International, Inc., to include the Astronautics EFIS system. Should Honeywell apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A20WE to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747–300 series airplanes modified by Honeywell International, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

As stated previously, the substance of the special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 747–300 series airplanes modified by Honeywell International, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 16, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–2037 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–03–AD; Amendment 39–12097; AD 2001–02–12]

RIN 2120–AA64

Airworthiness Directives; CFM International (CFMI) Model CFM56–7B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to CFMI model CFM56–7B turbofan engines. This action requires a one-time on-wing torque inspection, and torque if needed, of all the PS3 pressure line fittings to insure proper torque. This amendment is prompted by service events which resulted in two in-flight shutdowns (IFSD's) and an aborted takeoff due to the disconnection of one of the PS3 line fittings. The actions specified in this AD are intended to prevent air leakage from incorrectly torqued fittings of the PS3 line, which could result in engine power loss.

DATES: Effective February 14, 2001.

Comments for inclusion in the Rules Docket must be received on or before April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–03–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7133, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The FAA has received reports of two in-flight shutdowns and one aborted take-off on three different Boeing 737NG airplanes powered by CFM56–7B turbofan engines. In all of these cases, the engine rolled back to idle speed and would not accelerate. The investigation revealed that the PS3 pressure line B-nut fitting at the 6 o'clock position had disconnected in two of these events and the PS3 pressure B-nut fitting at the combustion case port location had disconnected in the third event. An operator, involved in one of the IFSD events, completed on-wing torque inspections of the PS3 pressure line fittings of its CFMI CFM56–7B fleet. As a result of these inspections, one engine was found with a loose B-nut fitting at the 6 o'clock location and two engines were found with loose cap fittings at the 6 o'clock location. The two engines with loose caps were on the same airplane. The investigation also initiated PS3 pressure line fitting torque inspections on 10 engines that were on Boeing's flight line. These inspections revealed one engine with a loose B-nut fitting at the 6 o'clock position and one engine with a loose cap fitting at the 6 o'clock position. General Electric and SNECMA also inspected CFM56–7B engines that were in assembly. No loose fittings were found. The investigation to determine the cause of the loose PS3 pressure line fittings continues. Action to insure correct torque of these fittings on current production engines has been initiated by adding a new torque inspection requirement for the PS3 pressure line fittings at the end of the main engine assembly process. However, based on the inspection results indicated above, it has been determined that mandating action on in-service engines to ensure that the PS3 pressure line fittings are correctly torqued is required.

Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same

type design, this AD is being issued to prevent air leakage from incorrectly torqued fittings of the PS3 line, which could result in engine power loss.

This AD requires a one-time, on-wing torque inspection of all the PS3 pressure line fittings to insure correct torque and, if necessary, torquing of those fittings to their correct value within 25 days after the effective date of this AD.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be 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 AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–03–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order No. 13132, because it would 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–02–12 CFM International: Amendment 39–12097. Docket No. 2001–NE–03–AD.

Applicability

This airworthiness directive (AD) is applicable to all CFM International (CFMI) model CFM56–7B turbofan engines except for engines with serial numbers DAC 876–747 and higher, and SAC 888–XXX and 889–XXX: 166–168, 172–173, 175–178, 180 and higher. These engines are installed on, but not limited to, Boeing 737NG airplanes.

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

Compliance

Compliance with this AD is required within 25 days after the effective date of this AD, unless already done.

To prevent air leakage from incorrectly torqued fittings of the PS3 pressure line, which could result in engine power loss, do the following:

(a) Check for and apply the correct torque in the tightening direction of all PS3 pressure line fittings as identified in Figure 1 of this AD as Joint 1, Joint 2, Joint 3, Joint 4, Joint 5, and Joint 6 as follows:

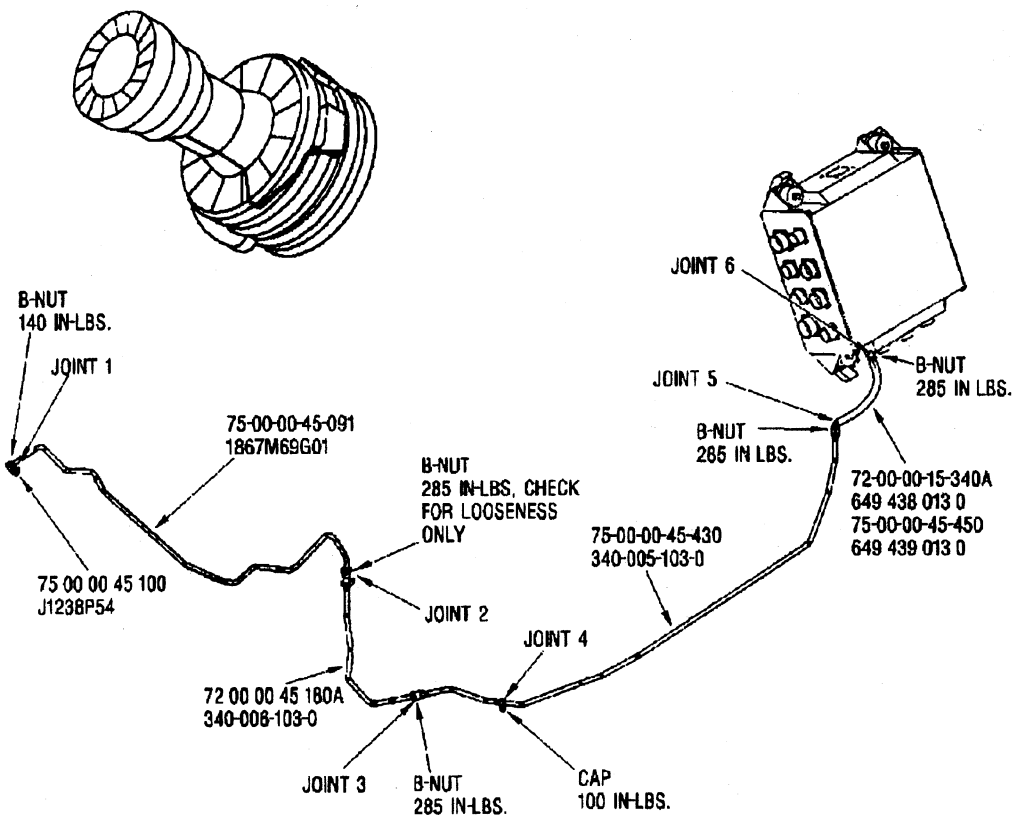
Note 2: CFM International Service Bulletin, CFM56–7B S/B 75–0005, dated January 22, 2001, and the CFM56 Standard Practice Manual, CFMI–TP.SP.2, contain information on torquing the PS3 pressure line fittings, including supporting the pressure line from countertorque.

(1) Torque Joint 1 to ensure a torque value of 140 inch-pounds.

(2) Due to accessibility limitations, check Joint 2 for finger looseness, and only if loose, torque to a value of 285 inch-pounds.

(3) Torque Joint 3, Joint 5, and Joint 6 to ensure a torque value of 285 inch-pounds.

(4) Torque Joint 4 to ensure a torque value of 100 inch-pounds.



Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Effective Date of This AD

(d) This amendment becomes effective on February 14, 2001.

Issued in Burlington, Massachusetts, on January 23, 2001.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller, Directorate, Aircraft Certification Service.

[FR Doc. 01–2610 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–226–AD; Amendment 39–12092; AD 2001–02–08]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 series airplanes, that requires replacement of the existing pneumatic de-icing boot pressure indicator switch with a newly designed switch. This amendment is prompted by an occurrence on a similar airplane model in which the pneumatic de-icing boot indication light may have provided the flightcrew with misleading information as to the proper functioning of the de-icing boots. The actions specified by this AD are intended to prevent ice accumulation on the airplane leading edges, which could reduce controllability of the airplane.

DATES: Effective February 20, 2001.

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

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 series airplanes, was published in the **Federal Register** on October 6, 1999 (64 FR 54239). That action proposed to require replacement of the existing pneumatic de-icing boot pressure indicator switch with a newly designed switch.

Comments

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

consideration has been given to the two comments received.

Request To Extend the Comment Period

The commenters request that the comment period for the proposed AD be extended by 2 to 3 months to give the manufacturer additional time to develop a warning system that would adequately address the identified unsafe condition. The commenters consider replacing the existing pressure indicator switch with a higher-value switch—without revising the system logic—to be insufficient to ensure a fully effective de-icing system. One commenter requests this extension of time to better define the appropriate pressure threshold for inflating the de-icing boots, which the commenter estimates to be 12 pounds per square inch gage (psig), rather than 15 psig as stated in the proposed AD. The commenters add that replacing the switch as proposed could generate a large number of false warnings. The manufacturer states that it is in the process of completing additional testing and data analysis for use in developing an appropriate modification.

The FAA does not concur with the request to extend the comment period. The manufacturer has had ample time (more than a year) since the issuance of the proposed rule to develop an appropriate modification. In accordance with the requirements of this AD, the manufacturer may submit a modification for approval by the FAA. Modifications (including those incorporating the installation of a lower pressure switch) that positively address the identified unsafe condition may be considered as alternative means of compliance. In addition, if such a modification is developed, approved, and available, the FAA may consider additional rulemaking.

Conclusion

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

Cost Impact

The FAA estimates that 89 airplanes of U.S. registry will be affected by this AD. Since the manufacturer has not yet developed one specific modification commensurate with the requirements of this AD, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the required modification.

Regulatory Impact

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–02–08 Short Brothers PLC: Amendment 39–12092. Docket 99–NM–226–AD.

Applicability: All Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the airplane leading edges, which could reduce controllability of the airplane, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD, replace the flight deck pneumatic de-icing boot pressure indicator switch with a switch that activates the flight deck indicator light at 15 pounds per square inch gage, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Effective Date

(d) This amendment becomes effective on February 20, 2001.

Issued in Renton, Washington, on January 18, 2001.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–2110 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–10]

Establishment of Class E Airspace; Sparrevohn, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Long Range Radar site (LRRS) at Sparrevohn, AK. The United States Air Force requested this action to create controlled airspace for the instrument approach and departure procedures to runway (RWY) 34 and from RWY 16 at Sparrevohn, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Sparrevohn, AK.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Major Roger Stirm, Department of the Air Force Representative, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5892; fax: (907) 271–2850; email: Roger.Stirm@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Sparrevohn, AK, was published in the **Federal Register** (65 FR 57569). The proposal was requested by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 34 and from RWY 16 at Sparrevohn, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying IFR operations at Sparrevohn, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Public comments to the proposal were submitted by a commenter representing both the Alaska Airmen's Association and the Alaska Communication Systems (ACS). The commenter had concerns on the size and orientation of the proposed Class E airspace. The U.S. Air Force, in a 28 November 2000 letter to the FAA and commenter, pointed out that the procedures used by the commenter to evaluate airspace needs were not developed by the U.S. Air Force and therefore have no validity in correctly analyzing the requested airspace. Furthermore, the U.S. Air Force revalidated the computations for the requested airspace and ensured that the U.S. Air Force minimized the amount of controlled airspace required in accordance with FAA Order 7130.3. The FAA has considered these comments and determined that the requested airspace is needed to provide adequate controlled airspace for aircraft flying IFR operations in the vicinity of Sparrevohn, AK. Thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Sparrevohn, AK, through a request by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 34 and from RWY 16 at Sparrevohn, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Sparrevohn, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—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 Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Sparrevohn, AK [New]

Sparrevohn LRRS, AK

(Lat. 61° 05′ 50″ N., long. 155° 34′ 27″ W.)

That airspace extending upward from 700 feet above the surface within a 3 mile radius of the Sparrevohn LRRS; and that adjacent airspace extending upward from 1,200 feet above the surface from lat. 60° 50′ 00″ N long. 156° 00′ 00″ W, counterclockwise to lat. 60° 50′ 00″ N long. 154° 32′ 00″ W, to lat. 61° 15′ 00″ N long. 154° 32′ 00″ W, to lat. 61° 15′ 00″ N long. 156° 00′ 00″ W, thence south along the 156° longitude to the point of beginning.

* * * * *

Issued in Anchorage, AK, on January 16, 2001.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–2233 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–12]

Establishment of Class E Airspace; Cape Newenham, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Long Range Radar site (LRRS) at Cape Newenham, AK. The United States Air Force requested this action to create controlled airspace for the instrument approach and departure procedures to runway (RWY) 14 and RWY 32 at Cape Newenham, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Cape Newenham, AK.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Major Roger Stirm, Department of the Air Force Representative, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5892; fax: (907) 271–2850; email: Roger.Stirm@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Cape Newenham, AK, was published in the **Federal Register** (65 FR 57576). The proposal was requested by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 14 and RWY 32 at Cape Newenham, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying IFR operations at Cape Newenham, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Public comments to the proposal were submitted by a commenter representing both the Alaska Airmen's Association and the Alaska Communication Systems (ACS). The commenter had concerns on the size and orientation of the proposed Class E airspace. The U.S. Air Force, in a 28 November 2000 letter to the FAA and commenter, pointed out that the procedures used by the commenter to evaluate airspace needs were not developed by the U.S. Air Force and therefore have no validity in correctly analyzing the requested airspace. Furthermore, the U.S. Air Force revalidated the computations for the requested airspace and ensured that the U.S. Air Force minimized the amount of controlled airspace required in accordance with FAA Order 7130.3. The FAA has considered these comments and determined that the requested airspace is needed to provide adequate controlled airspace for aircraft flying IFR operations in the vicinity of Cape Newenham, AK. The airspace description does overlap the existing Class E airspace and the exclusionary verbiage was inadvertently left out. The following verbiage has been added to the end of the airspace description: ''excluding the existing Class E airspace.'' The FAA has determined that this change is editorial in nature and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Cape Newenham, AK, through a request by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 32 and from RWY 14 at Cape Newenham, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Cape Newenham, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—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 Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Cape Newenham, AK [New]

Cape Newenham LRRS, AK
(Lat. 58° 38′ 47″ N., long. 162° 03′ 46″ W.)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Cape Newenham LRRS; and that airspace extending upward from 1,200 feet above the surface from lat. 58° 38′ 00′ N long. 162° 18′ 00″ W, clockwise to lat. 58° 50′ 00″ N long. 162° 26′ 00″ W, to lat. 59° 14′ 00″ N

long. 162° 26′ 00″ W, to lat. 59° 14′ 00″ N long. 161° 35′ 00″ W, to lat. 59° 00′ 00″ N long. 161° 35′ 00″ W, to the point of beginning, excluding the existing Class E airspace.

* * * * *

Issued in Anchorage, AK, on January 16, 2001.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–2234 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–11]

Establishment of Class E Airspace; Cape Lisburne, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Long Range Radar site (LRRS) at Cape Lisburne, AK. The United States Air Force requested this action to create controlled airspace for the instrument approach and departure procedures to runway (RWY) 26 and RWY 8 at Cape Lisburne, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Cape Lisburne, AK.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Major Roger Stirm, Department of the Air Force Representative, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5892; fax: (907) 271–2850; email: Roger.Stirm@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Cape Lisburne, AK, was published in the **Federal Register** (65 FR 57574). The proposal was requested by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 26 and RWY 8 at Cape Lisburne, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying IFR operations at Cape Lisburne, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Public comments to the proposal were submitted by a commenter representing both the Alaska Airmen's Association and the Alaska Communication Systems (ACS). The commenter had concerns on the size and orientation of the proposed Class E airspace. The U.S. Air Force, in a 28 November 2000 letter to the FAA and commenter, pointed out that the procedures used by the commenter to evaluate airspace needs were not developed by the U.S. Air Force and therefore have no validity in correctly analyzing the requested airspace. Furthermore, the U.S. Air Force revalidated the computations for the requested airspace and ensured that the U.S. Air Force minimized the amount of controlled airspace required in accordance with FAA Order 7130.3. The FAA has considered these comments and determined that the requested airspace is needed to provide adequate controlled airspace for aircraft flying IFR operations in the vicinity of Cape Lisburne, AK. Thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Cape Lisburne, AK, through a request by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 26 and from RWY 8 at Cape Lisburne, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Cape Lisburne, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—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 Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Cape Lisburne, AK [New]

Cape Lisburne LRRS, AK
(Lat. 68° 52′ 31″ N., long. 166° 06′ 36″ W.)

That airspace extending upward from 700 feet above the surface within a 7 mile radius

of the Cape Lisburne LRRS; and that airspace extending upward from 1,200 feet above the surface from lat. 68° 49′ 00″ N long. 165° 50′ 00″ W, counterclockwise to lat. 68° 49′ 00″ N long. 165° 30′ 00″ W, to lat. 69° 00′ 00″ N long. 164° 35′ 00″ W, to lat. 69° 15′ 00″ N long. 164° 45′ 00″ W, to lat. 69° 15′ 00″ N long. 165° 30′ 00″ W, to lat. 68° 57′ 00″ N long. 166° 20′ 00″ W, thence to the point of beginning, excluding the existing Class E airspace.

* * * * *

Issued in Anchorage, AK, on January 16, 2001.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–2235 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–13]

Establishment of Class E Airspace; Cape Romanzof, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Long Range Radar site (LRRS) at Cape Romanzof, AK. The United States Air Force requested this action to create controlled airspace for the instrument approach and departure procedures to runway (RWY) 02 and RWY 20 at Cape Romanzof, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Cape Romanzof, AK.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Major Roger Stirm, Department of the Air Force Representative, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5892; fax: (907) 271–2850; email: Roger.Stirm@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Cape Romanzof, AK, was published in the **Federal Register** (65 FR 57571). The proposal was requested by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 02 and RWY 20 at Cape Romanzof, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying IFR operations at Cape Romanzof, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Public comments to the proposal were submitted by a commenter representing both the Alaska Airmen's Association and the Alaska Communication Systems (ACS). The commenter had concerns on the size and orientation of the proposed Class E airspace. The U.S. Air Force, in a 28 November 2000 letter to the FAA and commenter, pointed out that the procedures used by the commenter to evaluate airspace needs were not developed by the U.S. Air Force and therefore have no validity in correctly analyzing the requested airspace. Furthermore, the U.S. Air Force revalidated the computations for the requested airspace and ensured that the U.S. Air Force minimized the amount of controlled airspace required in accordance with FAA Order 7130.3. The FAA has considered these comments and determined that the requested airspace is needed to provide adequate controlled airspace for aircraft flying IFR operations in the vicinity of Cape Romanzof, AK. The airspace description does overlap the existing Hooper Bay and Yukon-Kuskokwim Class E airspace and the exclusionary verbiage was inadvertently left out. The following verbiage has been added to the end of the airspace description: ''excluding the existing Class E airspace.'' The FAA has determined that this change is editorial in nature and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Cape Romanzof, AK, through a request by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 02 and from RWY 20 at Cape Romanzof, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Cape Romanzof, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—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 Federal Aviation

Administration Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Cape Romanzof, AK [New]

Cape Romanzof LRRS, AK
(Lat. 61° 46′ 49″ N., long. 166° 02′ 19″ W.)
That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Cape Romanzof LRRS; and that airspace extending upward from 1,200 feet above the surface from lat. 61° 54′ 30″ N long. 166° 10′ 00″ W, counterclockwise to lat. 61° 40′ 00″ N long. 167° 00′ 00″ W, to lat. 61° 30′ 00″ N long. 167° 10′ 00″ W, to lat. 61° 20′ 00″ N long. 167° 10′ 00″ W, to lat. 61° 20′ 00″ N long. 166° 30′ 00″ W, to lat. 61° 40′ 00″ N long. 165° 49′ 00″ W, thence to the point of beginning, excluding the existing Class E airspace.

* * * * *

Issued in Anchorage, AK, on January 16, 2001.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–2236 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–14]

Establishment of Class E Airspace; Tin City, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Long Range Radar site (LRRS) at Tin City, AK. The United States Air Force requested this action to create controlled airspace for the instrument approach and departure procedures to runway (RWY) 16 and RWY 34 at Tin City, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Tin City, AK.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Major Roger Stirm, Department of the Air Force Representative, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5892; fax: (907) 271–2850; email: Roger.Stirm@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Tin City, AK, was published in the **Federal Register** (65 FR 57572). The proposal was requested by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 16 and RWY 34 at Tin City, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying IFR operations at Tin City, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Public comments to the proposal were submitted by a commenter representing both the Alaska Airmen's Association and the Alaska Communication Systems (ACS). The commenter had concerns on the size and orientation of the proposed Class E airspace. The U.S. Air Force, in a 28 November 2000 letter to the FAA and commenter, pointed out that the procedures used by the commenter to evaluate airspace needs were not developed by the U.S. Air Force and therefore have no validity in correctly analyzing the requested airspace. Furthermore, the U.S. Air Force revalidated the computations for the requested airspace and ensured that the U.S. Air Force minimized the amount of controlled airspace required in accordance with FAA Order 7130.3. The FAA has considered these comments and determined that the requested airspace is needed to provide adequate controlled airspace for aircraft flying IFR operations in the vicinity of Tin City, AK. The airspace description does overlap the existing Class E airspace and the exclusionary verbiage was inadvertently left out. The following verbiage has been added to the end of the airspace description: ''excluding the existing Class E airspace.'' The Tin City LRRS coordinates were published with errors, the correct coordinates are lat. 65° 33′ 51″ N., long. 167° 55′ 21″ W. The FAA has determined that these changes are editorial in nature and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Tin City, AK, through a request by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 16 and from RWY 34 at Tin City, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Tin City, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—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 Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

AAL AK E5 Tin City, AK [New]

Tin City LRRS, AK
(Lat. 65° 33′ 51″ N., long. 167° 55′ 21″ W.)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Tin City LRRS; and that airspace extending upward from 1,200 feet above the surface from lat. 65° 30′ 00″ N long. 168° 10′ 00″ W, counterclockwise to lat. 65° 15′ 00″ N long. 168° 30′ 00″ W, to lat. 65° 04′ 00″ N long. 168° 00′ 00″ W, to lat. 65° 04′ 00″ N long. 167° 20′ 00″ W, to lat. 65° 30′ 00″ N long. 167° 20′ 00″ W, to lat. 65° 38′ 00″ N long. 167° 30′ 00″ W, to lat. 65° 38′ 00″ N long. 167° 42′ 00″ W, thence to the point of beginning, excluding the existing Class E airspace.

Issued in Anchorage, AK, on January 16, 2001.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–2237 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, 200 236, 574, 582, 583, 891, 982

[Docket No. FR–4608–F–03]

RIN 2501–AC72

Determining Adjusted Income in HUD Programs Serving Persons With Disabilities: Requiring Mandatory Deductions for Certain Expenses; and Disallowance for Earned Income; Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; delay of effective date.

SUMMARY: This document advises the public that the final rule published on January 19, 2001, which amends HUD's regulations in part 5, subpart F, to include additional HUD programs in the list of programs that must make certain deductions in calculating a family's adjusted income, will take effect on April 20, 2001. As provided in the ''Supplementary Information'' section of this final rule, this delay in the effective date is made in response to a White House memorandum of January 20, 2001. Given the imminence of the effective date of this rule, seeking prior public comment in accordance with HUD's regulations on rulemaking would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

DATES: The effective date of the final rule amending 24 CFR parts 5, 92, 200, 236, 574, 582, 583, 891, and 982, published at 66 FR 6218 (January 19, 2001) is delayed from February 20, 2001 until April 20, 2001.

FOR FURTHER INFORMATION CONTACT: For the HOME Investment Partnerships Program, contact Mary Kolesar, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–2470.

For the Housing Choice Voucher Program, contact Patricia Arnaudo, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–0744.

For the Housing Opportunities for Persons with AIDS Program, contact David Vos, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–1934.

For the Rent Supplement Program, contact, Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Rental Assistance Payment (RAP) Program, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Section 202 Supportive Housing Program for the Elderly (including Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), contact Aretha Williams, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2866.

For Section 8 Project-Based, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000.

For the Section 811 Supportive Housing Program for Persons with Disabilities, contact Gail Williamson, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2866.

For the Shelter Plus Care Program, contact the State Assistance Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–2140.

For the Supportive Housing Program (McKinney-Vento Act Homeless Assistance), contact Clifford Taffet, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708–1234.

For all of the above telephone numbers, persons with hearing or speech-impairments may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the ''800'' number, the telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 19, 2001 (66 FR 6218), HUD published a final rule amending its regulations in part 5, subpart F, to include additional HUD programs in the list of programs that must make certain deductions in calculating a family's adjusted income. These deductions primarily address expenses related to a person's disability, for example medical

expenses or attendant care expenses. The purpose of the January 19, 2001 final rule is to expand the benefits of these deductions to persons with disabilities served by HUD programs not currently covered by part 5, subpart F. Second, the final rule adds a new regulatory section to part 5 to require for some but not all of these same programs the disallowance of increases in income as a result of earnings by persons with disabilities. The January 19, 2001 final rule follows publication of a August 21, 2000 proposed rule, and takes into consideration public comments received on the rule.

The January 19, 2001 final rule provides for the rule to take effect on February 20, 2001. On January 20, 2001, the White House issued a memorandum to the heads and acting heads of all Executive Departments and Agencies regarding regulatory review. The January 20, 2001 memorandum instructs the agencies to temporarily postpone the effective dates of their regulations that have been published in the **Federal Register** but have not yet taken effect by 60 days. Consistent with the directive of the January 20, 2001 White House memorandum, the purpose of this document is to give notice that the effective date of the January 19, 2001 final rule has been changed to April 20, 2001.

Accordingly, HUD's final rule published on January 19, 2001 at 66 FR 6218 (Docket No. FR–4608–F–02, FR Doc. 01–1536) will take effect on April 20, 2001.

Dated: January 24, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–2563 Filed 1–29–01; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–4292–F–03]

RIN 2501–AC51

Revision of Freedom of Information Act Regulations; Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; delay of effective date.

SUMMARY: This document advises the public that the final rule published on January 22, 2001, which amends HUD's Freedom of Information Act (FOIA) regulations, will take effect on April 23, 2001. As provided in the **SUPPLEMENTARY INFORMATION** section of this final rule, this delay in the effective date is made in response to a White House memorandum of January 20, 2001. Given the imminence of the effective date of this rule, seeking prior public comment in accordance with HUD's regulations on rulemaking would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

DATES: The effective date of the final rule amending 24 CFR part 15 published at 66 FR 6964 (January 22, 2001) is delayed from February 21, 2001 until April 23, 2001.

FOR FURTHER INFORMATION CONTACT: Marylea Byrd, Assistant General Counsel, FOIA Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, Room 10248; Telephone (202) 708–3866 (this is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On January 22, 2001 (66 FR 6964), HUD published a final rule amending HUD's Freedom of Information Act (FOIA) regulations in their entirety. The rule implements the amendments made by the Electronic Freedom of Information Act to FOIA. The final rule also makes various streamlining and organizational changes to improve the clarity of the regulations. The final rule follows publication of a July 10, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule.

The January 22, 2001 final rule provides for the rule to take effect on February 21, 2001. On January 20, 2001, the White House issued a memorandum to the heads and acting heads of all Executive Departments and Agencies regarding regulatory review. The January 20, 2001 memorandum instructs the agencies to temporarily postpone the effective dates of their regulations that have been published in the **Federal Register** but have not yet taken effect by 60 days. Consistent with the directive of the January 20, 2001 White House memorandum, the purpose of this document is to give notice that the effective date of the January 22, 2001 FOIA amendments final rule has been changed to April 23, 2001.

Accordingly, HUD's final rule published on January 22, 2001 at 66 FR 6964 (Docket No. FR–4292–F–02, FR Doc. 01–1397) will take effect on April 23, 2001.

Dated: January 24, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–2564 Filed 1–29–01; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 221

[Docket No. FR–4588–F–03]

RIN 2502–AH50

Discontinuation of the Section 221(d)(2) Mortgage Insurance Program; Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; delay of effective date.

SUMMARY: This document advises the public that the final rule published on January 19, 2001, which discontinues the section 221(d)(2) mortgage insurance program, will take effect on April 20, 2001. As provided in the ''Supplementary Information'' section of this final rule, this delay in the effective date is made in response to a White House memorandum of January 20, 2001. Given the imminence of the effective date of this rule, seeking prior public comment in accordance with HUD's regulations on rulemaking would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

DATES: The effective date of the final rule amending 24 CFR part 221 published at 66 FR 5912 (January 19, 2001) is delayed from February 20, 2001, until April 20, 2001.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On January 19, 2001 (66 FR 5912), HUD published a final rule to discontinue the section 221(d)(2) mortgage insurance program. The January 19, 2001 final rule follows publication of a September 28, 2000 proposed rule. Since no public

comments were received on the proposed rule, the January 19, 2001 final rule adopts the proposed regulatory amendments without change.

The section 221(d)(2) program is rarely used by homebuyers, primarily due to its low mortgage limits. Moreover, the section 221(d)(2) program provides few homeownership opportunities not already made available by other HUD mortgage insurance programs. For these reasons, HUD decided to discontinue the section 221(d)(2) program and issued the January 19, 2001 final rule.

The January 19, 2001 final rule provides for the rule to take effect on February 20, 2001. On January 20, 2001, the White House issued a memorandum to the heads and acting heads of all Executive Departments and Agencies regarding regulatory review. The January 20, 2001 memorandum instructs the agencies to temporarily postpone the effective dates of their regulations that have been published in the **Federal Register** but have not yet taken effect by 60 days. Consistent with the directive of the January 20, 2001 White House memorandum, the purpose of this document is to give notice that the effective date of the January 19, 2001 final rule has been changed to April 20, 2001.

Accordingly, HUD's final rule published on January 19, 2001 at 66 FR 5912 (Docket No. FR–4588–F–02, FR Doc. 01–1534) will take effect on April 20, 2001.

Dated: January 24, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–2562 Filed 1–29–01; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1003

[Docket No. FR–4612–F–03]

RIN 2577–AC22

Revision to the Application Process for Community Development Block Grants for Indian Tribes and Alaska Native Villages; Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; delay of effective date.

SUMMARY: This document advises the public that the final rule published on January 17, 2001, which amends HUD's regulations for Community Development Block Grants for Indian Tribes and Alaska Native Villages (the ''ICDBG program''), will take effect on April 16, 2001. The amendments made by the final rule will permit the incorporation of the ICDBG grant application and selection procedures into HUD's SuperNOFA process. As provided in the ''Supplementary Information'' section of this final rule, this delay in the effective date is made in response to a White House memorandum of January 20, 2001. Given the imminence of the effective date of this rule, seeking prior public comment in accordance with HUD's regulations on rulemaking would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

DATES: The effective date of the final rule amending 24 CFR part 1003 published at 66 FR 4578 (January 17, 2001) is delayed from February 16, 2001 until April 16, 2001.

FOR FURTHER INFORMATION CONTACT: Jacqueline Kruszek, Office of Grants Management, Office of Native American Programs, Department of Housing and Urban Development, Suite 3390, 1999 Broadway, Denver, CO 80202; telephone 1–800–561–5913 (this is a toll-free number). Hearing or speech-impaired persons may access this telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Ms. Kruszek may also be contacted via e-mail at: *Jacqueline__A.__Kruszek@hud.gov.*

SUPPLEMENTARY INFORMATION: On January 17, 2001 (66 FR 4578), HUD published a final rule to amend its regulations for Community Development Block Grants for Indian Tribes and Alaska Native Villages (the ''ICDBG program''). The final rule follows publication of a November 6, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule. The principal reason for the changes is to allow the integration of the ICDBG program application process into HUD's Super Notice of Funding Availability (SuperNOFA) approach. The SuperNOFA process, in which the great majority of HUD's competitive funds are announced in one document, is designed to simplify the application process, bring consistency and uniformity to the application and selection process, and accelerate the availability of funding.

The January 17, 2001 final rule provides for the rule to take effect on February 16, 2001. On January 20, 2001, the White House issued a memorandum to the heads and acting heads of all Executive Departments and Agencies regarding regulatory review. The January 20, 2001 memorandum instructs the agencies to temporarily postpone the effective dates of their regulations that have been published in the **Federal Register** but have not yet taken effect by 60 days. Consistent with the directive of the January 20, 2001 White House memorandum, the purpose of this document is to give notice that the effective date of the January 17, 2001 final rule has been changed to April 16, 2001.

Accordingly, HUD's final rule published on January 17, 2001 at 66 FR 4578 (Docket No. FR–4612–F–02, FR Doc. 01–1206) will take effect on April 16, 2001.

Dated: January 24, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–2561 Filed 1–29–01; 8:45 am]

BILLING CODE 4210–32–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 96–222, 91–221 & 87–8; FCC 00–406]

Reconsideration of National Television Ownership

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial.

SUMMARY: This document denies a petition seeking reconsideration in part of the *Report and Order* released in this proceeding on August 6, 1999. It reaffirms the Commission's decision to count a market only once when calculating an entity's national ownership reach.

FOR FURTHER INFORMATION CONTACT: Jane Gross; Policy and Rules Division, Mass Media Bureau, at (202) 418–2130, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order* (''*MO&O*''), in MM Docket Nos. 96–222, 91–221 & 87–8; FCC 00–406. Adopted November 13, 2000, and released January 19, 2001. The full text of this MO&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00406.pdf on the

Commission's Internet site at *www.fcc.gov*.

Paperwork Reduction Act

This document contains no new or modified information collection requirements.

Synopsis of Memorandum Opinion and Order

1. In this MO&O, we deny a petition seeking reconsideration in part of the *Report and Order* (''*R&O*''), 64 FR 50647, September 17, 1999. In the *R&O*, we modified the national television ownership rule to clarify how to calculate a broadcast television station group owner's aggregate national audience reach for purposes of determining compliance with the 35% limit on such reach. The national ownership cap itself was at issue in the 1998 Biennial Review of Broadcast Ownership Rules. In our recently released Report in that proceeding we decided to retain the current 35% limit on a broadcast television station group owner's aggregate national audience reach.

2. In the *R&O*, we concluded that the public interest would be served by counting a market only once when calculating an entity's national ownership reach, even if that entity has an attributable interest in more than one television station in that market. Specifically, we narrowed the general ''satellite exemption'' to our ownership rules to exempt from the national ownership rule only satellite television stations in the same market as their parents; decided not to incorporate same-market local marketing agreements (LMAs) into the calculation of the brokering station's national audience reach; and replaced the Commission's use of Arbitron's Areas of Dominant Influence (ADIs) to define geographic television markets with the use of Nielsen's Designated Market Areas (DMAs). Consequently, owners of television stations that have an attributable interest in another TV station in the same market, or that operate a satellite station in the same market, do not have to double count those markets in calculating their national aggregate television audience reach. However, a station owner with an attributable interest in a station in a separate market (including satellite stations and LMAs) would have to count that additional audience as part of its national aggregate audience.

3. The Office of Communication, Inc. of United Church of Christ *et al.* (UCC *et al.*) seek reconsideration of the Commission's decision to count a market only once when calculating an entity's national ownership reach. UCC *et al.* argue that the Commission should instead attribute between 50% and 100% of the DMA households to an entity's second station in a market for purposes of calculating the national audience reach. Although they argue this specifically in the context of TV duopolies, they also contend that intramarket satellites and LMAs should be attributed similarly.

4. We reaffirm our decision to count a market only once when calculating an entity's national ownership reach. We discussed this decision in detail in the context of satellites and LMAs, and also noted that the concept is equally applicable to any situation in which an entity has an attributable interest in more than one TV station in a television market. We stated that when two stations in a market are commonly owned by virtue of the local television ownership rule (*i.e.,* a duopoly), that market's audience reach will be counted only once when calculating the group owner's national aggregate audience reach. We explained that, regardless of a station's actual viewership, a licensee is attributed with all of the viewership in the entire DMA. Therefore, increasing actual viewership by adding a second station does not affect the audience reach calculation, as that calculation already includes all the viewers in that DMA.

5. UCC *et al.* have not raised any arguments that persuade us to revisit this decision. Indeed, many of UCC *et al.*'s criticisms appear to be directed not at the national cap itself, but at limiting consolidation in local markets. The issue of how much consolidation should be permitted in local markets is addressed in our local ownership proceeding.

Ordering Clauses

6. Pursuant to the authority contained in sections 4(i), 303(r),and 405 of the Communications Act of 1934, as amended, and section 1.429(i) of the Commission's rules, 47 CFR 1.429(i), it is ordered that the Petition for Reconsideration in this proceeding is *denied*.

7. This proceeding is hereby *terminated*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–2542 Filed 1–29–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 66, No. 20
Tuesday, January 30, 2001

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 98–062E]

Performance Standards for On-line Antimicrobial Reprocessing of Pre-chill Poultry Carcasses

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rulemaking, Performance Standards for On-line Antimicrobial Reprocessing of Pre-chill Poultry Carcasses, which was scheduled to close on January 30, 2001. At the request of the National Chicken Council and the National Turkey Federation, FSIS is granting a 60-day extension to permit the associations to collect additional data. Because the comment period included the holiday season, the requestors asked for additional time to accommodate loss of time and personnel during the holidays. The proposed rule was published on December 1, 2000 (65 FR 75187) and requested comments on the proposed performance standards for poultry products reprocessed on-line and other information and data.

DATES: Comments must be received on or before April 2, 2001.

ADDRESSES: Send one original and two copies of written comments to FSIS Docket No. 98–062P, Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation by telephone at (202) 720–5627 or by fax (202) 690–0486.

Done in Washington, DC, on January 25, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–2652 Filed 1–26–01; 2:34 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 7, and 23

[Docket No. 01–01]

RIN 1557–AB94

Investment Securities; Bank Activities and Operations; Leasing

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its rules governing investment securities, bank activities and operations, and leasing. The proposed revisions to the investment securities regulations incorporate the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The proposed revisions to the bank activities and operations regulations: Establish the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act; revise the OCC's regulation governing bank holidays to conform it with the wording of the statute that authorizes the Comptroller to proclaim mandatory bank closings; clarify the scope of the term ''NSF fees'' for purposes of 12 U.S.C. 85, the statute that governs the rate of interest that national banks may charge; simplify the OCC's current regulation governing national banks' non-interest charges and fees; and provide that state law applies to a national bank operating subsidiary to the same extent as it applies to the parent national bank. The proposed revisions to the leasing regulations authorize the OCC to vary the percentage limit on the extent to which a national bank may rely on estimated residual value to recover its costs in personal property leasing arrangements. The purpose of these changes is to update and revise the OCC's regulations to keep pace with developments in the law and in the national banking system.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Direct your comments to: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 01–01. Comments will be available for public inspection and photocopying at the same location. In addition, you may send comments by fax to (202) 874–4448, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning proposed 12 CFR 1.2, contact Beth Kirby, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.3000, contact Stuart Feldstein, Assistant Director, or Andra Shuster, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.1021, 7.4001, 7.4002 and 7.4006, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 23.21, contact Steven Key, Attorney, Bank Activities and Structure Division, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to revise 12 CFR parts 1, 7, and 23 in order to address changing industry practices and recent statutory amendments. This proposal reflects the OCC's continuing commitment to assess the effectiveness of our rules and to make changes where necessary to improve our regulations.

Section-by-Section Description of the Proposal

A. Part 1—Investment Securities

Pursuant to 12 U.S.C. 24(Seventh), the total amount of investment securities of any one obligor held by a national bank for its own account generally may not exceed 10 per cent of the bank's capital

and surplus. Section 24(Seventh), however, exempts certain types of securities from this limitation and permits a bank to underwrite, deal in, and purchase them without quantitative restriction. Section 151 of the Gramm-Leach-Bliley Act (GLBA) [1] amended § 24(Seventh) to exempt certain municipal bonds from the 10 per cent limit if the national bank is well capitalized under the statutory prompt corrective action standards.[2] We propose to amend part 1 of our regulations, which implements the statutory investment securities provisions, to reflect this change in the statute.

The proposal adds new § 1.2(g), which defines the municipal bonds described in § 151 of GLBA. Thus, the term ''municipal bonds'' means obligations of a State or political subdivision other than general obligations, and includes limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986 issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State.

Part 1 classifies permissible national bank investment securities into several categories, or types.[3] Type I securities are securities—such as obligations issued by, or backed by the full faith and credit of, the United States—that a national bank may purchase, sell, deal in, and underwrite without regard to any capital and surplus limitation. The proposal amends the list of Type I securities that a national bank may underwrite, deal in, and purchase without quantitative limit, which appears in redesignated § 1.2(j) of the regulation, to add the municipal bonds as defined in new § 1.2(g), subject to the requirement that the bank be well capitalized. The regulation refers to the definition of well capitalized that the OCC uses for purposes of compliance with the prompt corrective action standards.[4]

In addition, the proposal modifies the section that defines certain Type II securities, newly designated as § 1.2(k), to make it clear that obligations issued by a State or political subdivision or agency of a State, for housing, university, or dormitory purposes are Type II securities only when they do not qualify as Type I securities (for example, when the subject bank is not well capitalized under prompt corrective action standards). The proposal also modifies the paragraph that defines Type III securities, newly redesignated as § 1.2(l), and uses municipal bonds as an example of that type, to make clear that municipal bonds are Type III securities only when they do not qualify as Type I securities. Regardless of the treatment of municipal bonds as Type I or Type III securities, a national bank must understand the fiscal condition of any municipality in whose bonds the bank invests.

B. Part 7—Bank Activities and Operations

The proposal makes five changes to part 7. First, it adds new § 7.1021, which defines the circumstances under which a school where a bank participates in a financial literacy program is not considered a branch of the bank under the McFadden Act. Second, the proposal amends § 7.3000 to conform it with the Comptroller's statutory authority to declare mandatory bank closings, as provided in 12 U.S.C. 95(b)(1). Third, the proposed rule revises current § 7.4001 to clarify the scope of the term ''NSF fees'' for purposes of 12 U.S.C. 85. Fourth, the proposal revises current § 7.4002, which governs non-interest charges and fees, to remove language that may be confusing. Finally, the proposal adds new § 7.4006, which provides that state laws apply to a national bank operating subsidiary to the same extent that they apply to the parent national bank.

Bank Participation in Financial Literacy Programs (New § 7.1021)

Proposed new § 7.1021(b) provides that a school premises or facility where a national bank participates in a financial literacy program is not a branch of the national bank under the McFadden Act if the conditions set out in the rule are satisfied.[5] Pursuant to these conditions, the bank must not ''establish and operate'' the school premises or facility. This requirement derives from the text of the statute, which describes the circumstances under which a national bank may ''establish and operate'' new branches and defines the term ''branch,'' [6] and from Federal judicial precedents determining when an off-premises location is a branch under these standards. Under those precedents, the court first determines whether the national bank has ''establish[ed] and operate[d]'' the off-premises location in question. If so, the court goes on to determine whether the off-premises location is covered by the definition of the term ''branch'' that the statute provides because it accepts deposits, pays checks, or lends money at that location.[7]

In construing the phrase ''establish and operate,'' the courts have looked at

[1] Pub. L. 106–102, § 151, 113 Stat. 1338, 1384 (November 12, 1999).

[2] 12 U.S.C. 1831*o*.

[3] *See, e.g.,* 12 CFR 1.2(i) and 1.3(a) defining Type I securities and providing that Type I securities are not subject to the 10 per cent capital and surplus limit); 12 CFR §§ 1.2(j) and 1.3 (defining Type II securities and describing the quantitative limit); and 12 CFR §§ 1.2(k) and 1.3(c) (defining Type III securities and describing the quantitative limit).

[4] *See* 12 CFR 6.4(b)(1) (defining the term ''well capitalized'').

[5] This proposal is consistent with the limitation, found in 12 U.S.C. 93a, which states that the general rulemaking authority vested in the OCC by that section ''does not apply to section 36 of [Title 12 of the United States Code].'' This limitation simply makes clear that section 93a does not expand whatever authority the OCC has pursuant to other statutes to adopt regulations affecting national bank branching. Congress clearly contemplated that the OCC would implement section 36, as is evidenced by the repeated references to obtaining the OCC's approval throughout that section (*see, e.g.,* paragraphs (b)(1), (b)(2), (c), (g), and (i) of section 36). It would be illogical to conclude that the OCC, in implementing the provisions requiring national banks to obtain the OCC's prior approval under the sections cited, cannot interpret what the terms of the statute mean or that the interpretation must be made on a case-by-case basis. This rulemaking simply clarifies a situation that falls outside the branching restrictions imposed by section 36.

[6] 12 U.S.C. 36(c) (describing the circumstances under which a national bank may ''establish and operate'' new branches); 12 U.S.C. 36(j) (defining the term ''branch'' to include ''any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.'').

[7] In First National Bank in *Plant City* v. *Dickinson,* 396 U.S. 122, 126–29, 134–37 (1969), the Supreme Court used a two-stage analysis to reach the conclusion that an armored car service was a branch within the meaning of the McFadden Act. The Court looked first at whether the off-premises facility was ''established and operated'' by the national bank. It then looked at whether the bank was using the off-premises facility to take deposits within the meaning of the McFadden Act's definition of a ''branch.'' Subsequent lower Federal court decisions using the same two-stage analysis employed by the Supreme Court in *Plant City* have concluded that certain off-premises locations are *not* branches under the McFadden Act. For example, in *Cades* v. *H & R Block, Inc.,* 43 F.3d 869, 874 (4th Cir. 1994), the U.S. Court of Appeals for the Fourth Circuit articulated the Supreme Court's two-stage analysis as a two-part test and used that test to determine that an office of the tax preparation firm H & R Block was not a branch. The court looked at key indicators of the bank's relationship with Block to determine whether the Block offices were established and operated by the bank. These indicators included the facts that the bank had no ownership or leasehold interest in the Block offices; no bank employees worked there; and the bank exercised no authority or control over Block's employees or methods of operation. The court held that, under these circumstances, the bank did not ''establish or operate'' the Block offices, that there was no need to go on to consider whether bank business—such as taking deposits—was transacted at Block offices, and that, accordingly, the Block offices were not branches.

the nature of the bank's interest in the location in question and at the degree of control the bank maintains over the employees who work at the location or the business conducted there. A bank would usually have no property interest in the school location. Its employees would typically work at the school only in connection with their participation in the financial literacy program. Finally, the bank would exercise no control over the school, its teachers, or its curriculum.

The proposed regulation also requires that the financial literacy program be principally intended to educate students. As noted in the proposal, a program would be considered principally educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, without being designed for the purpose of making profits.

Students in the financial literacy program need not be of any particular age or income background in order for the program to be eligible under this proposal. If the students are low- or moderate-income individuals, however, a bank's participation in a school savings program may also be given positive consideration under the Community Reinvestment Act as a community development service.[8]

Bank Holidays (Revised § 7.3000)

Under 12 U.S.C. 95(b)(1), in the event of natural or other emergency conditions existing in any State, the Comptroller may proclaim any day a legal holiday for national banks located in that State or affected area. In such a case, the Comptroller may require national banks to close on the day or days designated. If a State or State official designates any day as a legal holiday for ceremonial or emergency reasons, a national bank may either close or remain open unless the Comptroller directs otherwise by written order.

The OCC has issued a regulation implementing this authority that is set forth at 12 CFR 7.3000. The wording of § 7.3000 does not follow that of the statute precisely, however. Currently, § 7.3000 requires the Comptroller to issue a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a State, or a legally authorized State official declares a day to be a legal holiday due to emergency conditions, the regulation permits a national bank to choose to remain open or to close any of its banking offices in the affected geographic area.[9] Thus, unlike the statute, § 7.3000 does not authorize the Comptroller to require national banks to close in the event the Comptroller declares a legal holiday but, instead, gives national banks discretion to remain open during either a Comptroller- or State-declared holiday.

This proposed rule amends § 7.3000 to conform it with the Comptroller's statutory authority to proclaim mandatory bank closings, as provided in 12 U.S.C. 95(b)(1). It provides that if the Comptroller or a State declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices or it may choose to continue its operations *unless* the Comptroller by written order directs otherwise.

Definition of ''Interest'' for Purposes of 12 U.S.C. 85 (Revised § 7.4001(a))

The proposed rule revises current § 7.4001 to clarify the scope of the term ''NSF fees'' for purposes of 12 U.S.C. 85. Section 85 governs the interest rates that national banks may charge, but it does not define the term ''interest.'' Section 7.4001 generally defines the charges that are considered ''interest'' for purposes of section 85, then sets out a nonexclusive list of charges covered by that definition. The list includes ''NSF fees.''

The inclusion of ''NSF fees'' in the definition of ''interest'' was intended to codify a position the OCC took in an interpretive letter issued in 1988. Interpretive Letter No. 452 concluded that charges imposed by a credit card bank on its customers who paid their accounts with checks drawn on insufficient funds were ''interest'' within the meaning of section 85.[10] IL No. 452 referred to the charges in question as ''NSF charges.'' The term, however, is also commonly used to refer to fees imposed by a bank on its checking account customers whenever a customer writes a check against insufficient funds, regardless of whether the check was intended to pay an obligation due to the bank. These different uses of the term ''NSF fees'' have created ambiguity about the scope of the term as used in § 7.4001(a).

The proposal amends § 7.4001(a) to clarify that the term ''NSF fees'' includes only those fees imposed by a *creditor* bank when a borrower attempts to pay an obligation to that bank with a check drawn on insufficient funds. Fees that a bank charges for its deposit account services—including overdraft and returned check charges—are not covered by the term ''NSF fees.'' These fees are therefore not ''interest'' but, rather, are charges covered by 12 CFR 7.4002.

We also invite comment on whether the term ''NSF fees'' should also include at least some portion of the fee imposed by a national bank when it pays a check notwithstanding that its customer's account contains insufficient funds to cover the check. As a matter of practice, banks often vary the amount of the charges they impose depending on whether they honor the customer's check. A bank that pays a check drawn against insufficient funds may be viewed as having extended credit to the accountholder. Consistent with that approach, the difference between what the bank charges a customer when it pays the check and what it charges when it dishonors the check and returns it could be viewed as interest within the meaning of 12 U.S.C. 85. Currently, the OCC's regulation does not expressly resolve this issue.

National Bank Non-Interest Charges (Revised § 7.4002)

Current § 7.4002 sets out the basic authority to impose non-interest charges and fees, including deposit account service charges. It provides that the decision to do so and to determine the amounts of charges and fees is a business decision to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. It also provides that a bank ''reasonably establishes'' non-interest charges and fees if it considers, among other factors, the four factors enumerated in the regulation. The OCC construes § 7.4002 to mean that a national bank that considers at least these four factors in setting its non-interest charges and fees has satisfied the safety and soundness concerns in the regulation and faces no supervisory impediment to exercising the authority to set charges and fees that the regulation describes.[11]

[8] *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, 64 FR 23, 618 (May 3, 1999) (Q and A 3 addressing 12 CFR §§ 25.12(j), 228.23(j), 345.23(j), and 563e.12(i) (examples of community development services)).

[9] The regulation also provides that when a State or a legally authorized State official designates any day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close. 12 CFR 7.3000(c). Finally, it provides that a national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied. 12 CFR 7.3000(d).

[10] Interpretive Letter No. 452 (Aug. 11, 1988), *reprinted in* [1988–89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,676 (IL 452).

[11] *See* Brief *Amicus Curiae* of the Office of the Comptroller of the Currency in Support of National Bank Plaintiffs, *Bank of America, N.A.* v. *San*

The proposal eliminates certain ambiguities in the text of § 7.4002 without altering the substance of the regulation or the way in which the OCC intends that it operate. First, current § 7.4002(a) gives two examples of the types of non-interest charges and fees that national banks may impose: Charges on dormant accounts and fees for credit reports or investigations. We have removed these examples in the proposal, given that the explicit reference to the two types fees is unnecessary and could be misinterpreted as a limitation on a national bank's ability to charge other types of fees. We note, however, that dormant account charges and fees for credit reports and investigations continue to be permissible non-interest charges and fees even though they are no longer specifically mentioned in the rule.

We also propose to amend § 7.4002(b) to clarify what a bank's obligations are under that section. The sentence in § 7.4002(b) that currently introduces the four factors says that a bank ''reasonably establishes'' non-interest charges and fees if it considers those factors among others. This language was intended to convey that the bank must exercise sound banking judgment and rely on safe and sound banking principles in setting charges and fees. In order to clarify that intent, we have revised the sentence in § 7.4002(b) that currently introduces the four factors to say that a bank establishes non-interest charges and fees ''in accordance with safe and sound banking principles'' if it employs a decision-making process through which it considers the four factors. This revision clarifies that consideration of the four factors is a process requirement to be implemented by the bank and more clearly establishes the connection between the required process and the safety and soundness considerations that underlie it.

The four factors are the same as under the current regulation, including the factor addressing the maintenance of the bank's safety and soundness. We expect that, pursuant to this factor, a bank would consider any risks, such as reputation or litigation risk, that would be affected by the imposition of a particular fee. We note that consideration of the four factors is relevant both when establishing a new fee and when changing a fee that already has been established. The reference to factors other than the four that are enumerated in § 7.4002(b) has been retained in order to avoid creating any doubt about a national bank's ability to rely on factors in addition to those stated in the regulation.

Section 7.4002(a) is also revised to clarify that the authorization it contains to establish fees and charges necessarily includes the authorization to decide the amount and method by which they are computed. Thus, for example, fees resulting from the method the bank employs to post checks presented for payment are included within the authorization provided by § 7.4002.

Finally, current § 7.4002(d) addresses the OCC's issuance of opinions concerning whether state laws purporting to limit or prohibit national bank non-interest charges and fees are preempted. The first clause of current paragraph (d) states that the OCC evaluates on a case-by-case basis whether a national bank may establish fees pursuant to paragraphs (a) and (b) of § 7.4002; the second clause provides that, in determining whether a state law purporting to limit or prohibit such fees is preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States Constitution and applicable judicial precedent. The first clause simply underscores that a national bank's establishment of fees is governed by the preceding paragraphs of § 7.4002; the second clause was intended to convey that the law as articulated by the Supreme Court and the lower Federal courts governs issues of federal preemption. The proposal revises § 7.4002(d) to rephrase and restate these two points more directly and succinctly.

Applicability of State Law to National Bank Subsidiaries (New § 7.4006)

Proposed § 7.4006 clarifies that state laws apply to a national bank operating subsidiary to the same extent as those laws apply to the parent national bank.

Operating subsidiaries have been authorized for national banks for decades, recognizing that, under various circumstances, it may be convenient or useful for the bank to conduct activities that the bank could conduct directly, through the alternate form of a controlled subsidiary company. Thus, operating subsidiaries and the activities they conduct are an embodiment of the incidental powers of their parent bank, and often have been described as the equivalent of a department or division of their parent bank—organized for convenience in a different corporate form.

Consistent with the concept underlying this authority for operating subsidiaries, and recent legislation recognizing the status of national bank operating subsidiaries, the proposal provides that state law applies to the activities of an operating subsidiary to the same extent it would apply if those activities were conducted by its parent bank. In GLBA, for example, Congress recognized the authority of national banks to own subsidiaries that engage ''solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks.'' [12] Similarly, the OCC operating subsidiary regulation provides that an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent bank.[13] Fundamental to the description of the characteristics of operating subsidiaries in GLBA and the OCC's rule is that, unless otherwise provided by Federal law or OCC regulation, State laws apply to operating subsidiaries to the same extent as they apply to the parent national bank.

The Office of Thrift Supervision (OTS) has already taken this approach with respect to the operating subsidiaries of Federal savings associations. An OTS rule also provides that state law applies to Federal savings associations' operating subsidiaries, which are limited to engaging in activities permissible for the parent thrift, to the extent it applies to the parent thrift.[14] A Federal district court has recently upheld this OTS rule.[15]

For the reasons stated above, the OCC proposes to add a new § 7.4006, stating that, except where Federal law or an OCC rule provides otherwise, State law applies to operating subsidiaries only to the extent that the law applies to the parent bank.

Francisco, No. C 99 4817 VRW (N.D. Ca.) (citing OCC opinion letters construing and describing the operation of 12 CFR 7.4002). On July 11, 2000, the U.S. District Court for the Northern District of California granted the plaintiffs in this case permanent injunctive relief against San Francisco and Santa Monica city ordinances that purported to prohibit national banks from charging fees for providing banking services through automatic teller machines (ATMs). The case is currently pending appeal in the U.S. Court of Appeals for the Ninth Circuit.

[12] Pub. L. 106–102, § 121, 113 Stat. at 1378, *codified at* 12 U.S.C. 24a(g)(3).

[13] 12 CFR 5.34(e)(3).

[14] 12 CFR 559.3(n). *See* 61 FR 66561, 66563 (December 18, 1996) (preamble to OTS final rule adopting section 559.3(n); explaining that the basis for the OTS rule is that the operating subsidiary of a Federal savings association ''is treated as the equivalent of a department of the parent thrift for regulatory and reporting purposes'').

[15] *See WPS Financial, Inc.* v. *Dean*, No. 99 C 0345 C (W.D. Wi. Nov. 26, 1999); *Chaires* v. *Chevy Chase Bank, FSB*, 131 Md. App. 64, 748 A.2d 34, 44 (Md. Ct. Sp. App. 2000).

C. Part 23—Leasing

Estimated Residual Value for Section 24 (Seventh) Leases (Revised § 23.21)

The OCC's regulations at 12 CFR part 23 currently authorize national banks to engage in leasing activities pursuant to two distinct sources of authority: section 24 (Tenth), which expressly authorizes leasing subject to certain conditions specified in that statute, including a 10% of assets limit on the amount of the activity that the national bank can conduct; and section 24 (Seventh), which authorizes leasing as an activity that is part of the business of banking without imposing a percentage-of-assets limit.[16] The rules require that leases be ''full-payout leases.'' That term is defined to mean a lease in which the national bank reasonably expects to recover its investment in the leased property, plus its cost of financing, from rental payments, estimated tax benefits, and the estimated residual value of the leased property at the expiration of the lease term. The rules for section 24 (Seventh) leases further provide that the bank's estimate of the residual value of the leased property must be reasonable in light of the nature of the property and all the circumstances surrounding the lease transaction and that, in any event, the unguaranteed amount of residual value relied upon may not exceed 25% of the bank's original cost of the property. 12 CFR 23.3, 23.2(e), 23.21.

The OCC last revised the leasing rules in 1996. Since then, our experience supervising national banks that engage in the leasing business has suggested that the 25% residual value limit may not be appropriate for all types of personal property leasing. We are therefore proposing to modify current § 23.21 to provide that the limit on the amount of estimated residual value is either 25% or the percentage for a particular type of personal property that is specified in guidance published by the OCC. As revised, § 23.21 would permit the OCC to establish a different percentage requirement than 25% if a different limit is warranted. If the OCC does not specify a different limit, the 25% limit would continue to apply. We would apprise national banks of any different limit or limits established under this provision by publishing an OCC bulletin, which would subsequently be incorporated into the Comptroller's Handbook booklet on Lease Financing.

[16] *M&M Leasing* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (bank leasing of personal property permissible because it was functionally equivalent to loaning money on personal security).

Request for Comments

The OCC invites comment on all aspects of the proposed regulation.

Specifically, we invite your comments on how to make this proposed rule easier to understand. For example:

Have we organized the material to suit your needs?

Are all the requirements in the rule clearly stated?

Does the rule contain technical language or jargon that is not clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

Would more (but shorter) sections be better?

What else could we do to make the rule easier to understand?

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal codifies caselaw and OCC interpretations, but adds no new requirements. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. The proposal codifies caselaw and OCC interpretations, but adds no new requirements.

Executive Order 13132

Executive Order 13132 (Order) requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has ''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.'' In the case of a regulation that has Federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

Executive Order 13132 imposes certain requirements when an agency issues a regulation that has federalism implications or that preempts State law. Under the Order, a regulation has federalism implications if it has 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. In general, the Order requires the agency to adhere strictly to federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

It is not clear that the Order applies to this proposal. Proposed § 7.4006

addresses the applicability of state law to national bank operating subsidiaries, but, in the opinion of the OCC, it reflects the conclusion that a federal court would reach, even in the absence of the regulation, pursuant to the Supremacy Clause and applicable federal judicial precedent. Nonetheless, the OCC plans for its final rule to satisfy the requirements of the Order. If an agency promulgates a regulation that has federalism implications and preempts State law, the Order imposes upon the agency requirements to consult with State and local officials, to publish a ''federalism summary impact statement,'' and to make written comments from State and local officials available to the Director of OMB. In the preamble to any final rule that results from our proposal, we will describe the results of our consultation with State or local officials and include a federalism summary impact statement. Moreover, we will make any written comments we receive from State or local officials available to the Director of OMB.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 23

National banks.

Authority and Issuance

For the reasons set forth in the preamble, parts 1, 7, and 23 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1, *et seq.*, 12 U.S.C. 24 (Seventh) and 93a.

2. In § 1.2, current paragraphs (g) through (m) are redesignated as (h) through (n), a new paragraph (g) is added, newly designated paragreaphs (j)(4), (k)(1), and (l) are revised to read as follows:

§ 1.2 Definitions.

* * * * *

(g) *Municipal bonds* means obligations of a State or political subdivision other than general obligations, and includes limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986 issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State.

* * * * *

(j) * * *

(4) General obligations of a State of the United States or any political subdivision thereof; and municipal bonds if the national bank is well capitalized as defined in 12 CFR 6.4(b)(1);

* * * * *

(k) * * *

(1) Obligations issued by a State, or a political subdivision or agency of a State, for housing, university, or dormitory purposes that would not satisfy the definition of Type I securities pursuant to paragraph (j) of § 1.2.

* * * * *

(l) *Type III security* means an investment security that does not qualify as a Type I, II, IV, or V security. Examples of Type III securities include corporate bonds and municipal bonds that do not satisfy the definition of Type I securities pursuant to paragraph (j) of § 1.2.

* * * * *

PART 7—BANK ACTIVITIES AND OPERATIONS

3. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 92, 92a, 93, 93a, 481, 484, 1818.

Subpart A—Bank Powers

4. A new § 7.1021 is added to read as follows:

§ 7.1021 National bank participation in financial literacy programs.

A national bank may participate in a financial literacy program on the premises of, or at a facility used by, a school. The school premises or facility will not be considered a branch of the bank if:

(a) The bank does not establish and operate the school premises or facility on which the financial literacy program is conducted; and

(b) The principal purpose of the financial literacy program is educational. For example, a program is educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, and is not designed for the purpose of profit-making.

5. In § 7.3000, the last sentence of paragraph (b) is removed and two sentences are added in its place to read as follows:

§ 7.3000 Bank hours and legal holidays.

* * * * *

(b) * * * When the Comptroller, a State, or a legally authorized State official declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices. Alternatively, the national bank may continue its operations unless the Comptroller by written order directs otherwise.

* * * * *

6. In § 7.4001, the second sentence of paragraph (a) is revised to read as follows:

§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) * * * It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees that are imposed by a creditor when a borrower tenders payment on a debt with a check drawn on insufficient funds, overlimit fees, annual fees, cash advance fees, and membership fees.* * *

* * * * *

7. Section 7.4002 is revised to read as follows:

§ 7.4002 National bank charges.

(a) *Authority to impose charges and fees.* A national bank may charge its customers non-interest charges and fees, including deposit account service charges.

(b) *Considerations.* (1) All charges and fees should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers.

(2) The establishment of non-interest charges and fees, their amounts, and the method of calculating them are business decisions to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A national bank establishes non-interest charges and fees in accordance with safe and sound banking principles if the bank employs a decision-making process through which it considers the following factors, among others:

(i) The cost incurred by the bank in providing the service;

(ii) The deterrence of misuse by customers of banking services;

(iii) The enhancement of the competitive position of the bank in accordance with the bank's business plan and marketing strategy; and

(iv) The maintenance of the safety and soundness of the institution.

(c) *Interest.* Charges and fees that are ''interest'' within the meaning of 12 U.S.C. 85 are governed by § 7.4001 and not by this section.

(d) *State law.* Preemption principles derived from the United States Constitution, as interpreted through judicial precedent, govern determinations regarding the applicability of State law to fees described in this section.

(e) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by 12 CFR part 9.

8. A new § 7.4006 is added to read as follows:

§ 7.4006 Applicability of State law to national bank operating subsidiaries.

Unless otherwise provided by Federal law or OCC regulation, State laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank.

PART 23—LEASING

9. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 24 (Tenth), and 93a.

Subpart C—Section 24(Seventh) Leases

10. In § 23.21, current paragraph (a)(2) is revised to read as follows:

§ 23.21 Estimated residual value.

* * * * *

(a) * * *

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank or the percentage for a particular type of property specified in published OCC guidance.

* * * * *

Dated: January 8, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–1614 Filed 1–29–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–40–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes revising an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76A helicopters. That AD currently requires a one-time inspection of the tail rotor blade (blade) spar elliptical centering plug (centering plug) for disbonding and the addition of a retaining pad on the pitch change shaft between the output tail rotor gearbox flange and the inboard tail rotor spar. This action would contain the same requirements as the existing AD but would clarify that the 500-hour time-in-service (TIS) repetitive inspections, which could cause inadvertent damage, are not required. This AD would also incorporate by reference a revised alert service bulletin (ASB) that does not include the 500-hour TIS repetitive inspections. This proposal is prompted by operator confusion about whether the current AD continues to require the 500-hour TIS repetitive inspections. The proposed AD is intended to verify that the FAA has determined that the 500-hour TIS repetitive inspections are not required to prevent the centering plug from disbonding and moving out of position, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–40–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–40–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–40–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 30, 1994, the FAA issued AD 94–14–20, Amendment 39–8969 (59 FR 41238, August 11, 1994), to require inspecting each blade centering plug for disbonding; adding a retaining pad on the pitch change shaft between the tail rotor output gearbox flange and the inboard blade spar; and removing the 500-hour repetitive inspection. That action was prompted by successful service experience and an improved bonding procedure. The requirements of that AD are intended to prevent the centering plug from disbonding and moving out of position, loss of tail rotor control, and subsequent loss of control of the helicopter.

Since the issuance of that AD, Sikorsky has issued revised ASB 76–65–35B, dated October 2, 1997, to supersede the basic ASB. The revised ASB amplifies the basic procedures and specifies that the recurring inspection interval (formerly 500-hours time-in-service (TIS)) is the interval specified in the S–76A Airworthiness Limitations and Inspection Schedule. The ASB also revises the text referencing consumables by changing military specifications to commercial equivalents.

The FAA has become aware that 500-hour TIS repetitive inspections are being conducted because of the misconception that AD 94–14–20 mandates the entire ASB. These repetitive inspections could result in inadvertent damage to the tail rotor blades. The FAA understands how this confusion could occur since the AD language does inadvertently incorporate all the inspection requirements of Sikorsky Aircraft Alert Service Bulletin 76–15–35A, Revision A, dated February 29, 1984. However, that was not the intent of the AD as explained in the preamble to AD 94–14–20. The FAA intended to eliminate the 500-hour TIS repetitive inspections for centering plug disbonding. Incorporating specific portions of ASB 76–65–35B, dated October 2, 1997, that does not contain the 500-hour TIS repetitive inspections will clarify the intended AD requirements.

We have identified an unsafe condition that is likely to exist or develop on other Sikorsky Model S–76A helicopters of the same type design. The proposed AD would revise AD 94–14–20 and would retain the same basic requirements but would incorporate by reference portions of the revised ASB and would clarify that the repetitive inspections are not required by the AD.

The FAA estimates that this proposed AD would affect 150 helicopters of U.S. registry. The revised AD would not impose any additional burden or costs.

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8969 (59 FR 41238, August 11, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Sikorsky Aircraft Corporation: Docket No. 2000–SW–40–AD. Revises AD 94–14–20, Amendment 39–8969, Docket No. 93–SW–13–AD.

Applicability: Model S–76A helicopters, with tail rotor blade (blade) assembly, part number (P/N) 76101–05001 (all dash numbers) or 76101–05101 (all dash numbers), installed with more than 130 hours time-in-service (TIS), certificated in any category.

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

Compliance: Required within 25 hours TIS, unless accomplished previously.

To prevent the blade spar elliptical centering plug (centering plug) from disbonding and moving out of position, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the centering plug for disbonding of the polyurethane filler that fills the space between the aluminum centering plug and the graphite spar in accordance with the Accomplishment Instructions, paragraph 3.A.(1) and (2), of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–35B, dated October 2, 1997 (ASB).

Note 2: The 500-hours TIS repetitive inspections contained in the Accomplishment Instructions, paragraph 3.D., of Sikorsky Aircraft Corporation Alert Service Bulletin 76–65–35A, Revision A, dated February 29, 1984, are not required by this AD.

(1) If the inspection of the centering plug reveals disbonding of ½-inch or less in length, install a retaining pad, P/N 76102–05004–111, in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB.

(2) For disbonds greater than ½-inch in length, repair the blade assembly in accordance with the Accomplishment Instructions, paragraph 3.B.(1), of the ASB except you are not required to contact Sikorsky Worldwide Customer Service. If blades are found with polyurethane filler excessively cracked or deteriorated to extent of breaking away from the spar or aluminum plug by 0.005-inch or greater, replace the blade with an airworthy blade.

(3) For spars with complete spar to centering plug disbond in which the polyurethane filler is intact and remains fully bonded to the centering plug, repair the blade assembly in accordance with the Accomplishment Instructions, paragraph 3.B.(2), of the ASB.

(4) For spars with complete polyurethane filler to centering plug disbond in which the polyurethane filler is intact and remains fully bonded to the spar, repair the blade assembly in accordance with the Accomplishment Instructions, paragraph 3.B.(3) of the ASB.

(b) Install a retaining pad, P/N 76102–05004–111, in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished if a retaining pad has been installed.

Issued in Fort Worth, Texas, on January 22, 2001.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–2428 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 112 and 412

[FRL–6936–2]

National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations—Proposed Revisions; Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: The Environmental Protection Agency hereby gives notice that it will conduct eight public meetings on new proposed regulations under the Clean Water Act for Concentrated Animal Feeding Operations (CAFOs). EPA Administrator Carol Browner signed these proposed regulations on December 15, 2000, and the Agency published the proposed regulations in the **Federal Register** on January 12, 2001, under the title National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations.

The purpose of the meetings is to enhance public understanding of the proposed regulations for CAFOs. The meetings are not a mechanism for submitting formal comments on the proposal. The meetings will consist of a brief presentation by EPA officials on the proposed regulations followed by a question and answer session. Participants are encouraged to familiarize themselves with the basic aspects of the proposed regulations prior to the public meetings; each speaker's time will be limited so that all interested parties may have the opportunity to pose questions. Advance registration is not required.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses. Formal comments on the proposal should be submitted by mail to: Concentrated Animal Feeding Operation Proposed Rule Comment Clerk OW–00–27, Water Docket (MC4101), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington DC 20460. Comments may also be submitted electronically to *ow-docket@epa.gov.* For more specifics about how to submit comments, please refer to the January 12 **Federal Register** announcement, available at *http://www.epa.gov/owm/afos/rule.htm.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the meetings, please contact Nina Bonnelycke, U.S. EPA, 1200 Pennsylvania Ave., NW., 4203M, Washington, DC 20460. Questions may also be directed to Ms. Bonnelycke at 202–564–0764 or *bonnelycke.nina@epa.gov.* Information on the CAFO proposal public meetings and on the CAFO proposal in general is also available at *http://www.epa.gov/owm/afos/rule.htm.* The website has the text of the **Federal Register** announcement with the CAFO proposed rule and accompanying preamble, a factsheet describing the proposal, and other pertinent information. Key documents are also available through EPA's Water Resources Center (202–260–7786).

SUPPLEMENTARY INFORMATION:

Dates, Cities, Times and Addresses for Public Meetings

EPA is conducting eight public meetings on the CAFO proposed regulations as described in the following table:

Date	City	Time	Meeting address
March 1, 2001	Baltimore, MD	1 p.m.–5 p.m.	Baltimore Marriott, Inner Harbor, 110 South Eutaw Street.
March 7, 2001	Ames, IA	1:30 p.m.–5:30 p.m.	Benton Auditorium, Scheman Building, Iowa State Center, Elwood Drive.
March 13, 2001	Riverside, CA	1 p.m.–5 p.m.	Riverside Convention Center, Holiday Inn Select, 3400 Market Street.
March 15, 2001	Ft. Wayne, IN	1 p.m.–5 p.m.	Fort Wayne Hilton at the Convention Center, 120 South Calhoun Street.
March 20, 2001	Dallas, TX	1 p.m.–5 p.m.	Hotel Adolphus, 1321 Commerce Street.
March 22, 2001	Chattanooga, TN	1 p.m.–5 p.m.	Chattanooga Clarion Hotel, 47 Chestnut Street.
March 27, 2001	Denver, CO	1 p.m.–5 p.m.	Executive Tower Hotel, 1405 Curtis Street.
March 29, 2001	Boise, ID	1 p.m.–5 p.m.	The Grove Hotel, 245 South Capitol Blvd.

Prior to attending any of these public meetings, please confirm location information with EPA as indicated under **FOR FURTHER INFORMATION CONTACT.**

Please note that the purpose of these meetings is to enhance public understanding of the proposed regulations for CAFOs. The meetings are not a mechanism for submitting formal comments on the proposal, and formal comments should be submitted to the address provided in the **ADDRESSES** section above.

Background on CAFO Proposed Regulations

On December 15, 2000, EPA Administrator Browner signed the Agency's proposal to revise and update two regulations under the Clean Water Act (40 CFR parts 112 and 412) that address the water quality impacts of manure, wastewater, and other process waters generated by concentrated animal feeding operations (CAFOs). These two regulations are the National Pollutant Discharge Elimination System (NPDES) provisions that define which operations are CAFOs and establish permit requirements, and the Effluent Limitations Guidelines for feedlots (beef, dairy, swine and poultry subcategories), which establish the technology-based effluent discharge standards for CAFOs. EPA is proposing revisions to these regulations to address changes that have occurred in the animal industry sectors over the last 25 years, to clarify and improve implementation of CAFO permit requirements, and to improve the environmental protection achieved under these rules.

Environmental concerns being addressed by this rule include both ecological and human health effects. Manure from stockpiles, lagoons, or excessive land application can reach

waterways through runoff, erosion, spills, or via groundwater. These discharges can result in excessive nutrients (nitrogen, phosphorus, and potassium), oxygen-depleting substances, and other pollutants in the water. This pollution can kill fish and shellfish, cause excess algae growth, harm marine mammals, and contaminate drinking water.

EPA is proposing to revise effluent guidelines applicable to beef, dairy, swine, and poultry operations that are defined as CAFOs, pursuant to the NPDES revisions. The proposed effluent guidelines include regulations for both new and existing animal feeding operations that meet the definition of a CAFO. The proposed effluent guidelines revisions do not alter the requirements for horses, ducks, sheep or lambs.

EPA published the proposed regulations in the **Federal Register** on January 12, 2001, at 66 FR 2959. The full text of the **Federal Register** announcement as well as a factsheet describing the proposed regulations are available as outlined above under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 17, 2001.

Michael B. Cook,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 01–1976 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–5–U

Notices

Federal Register
Vol. 66, No. 20
Tuesday, January 30, 2001

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

Food Safety and Inspection Service

[Docket No. 01–001N]

Codex Alimentarius Commission: Thirty-Third Session of the Codex Committee on Food Additives and Contaminants

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on Tuesday, February 13, 2001. The purpose of the meeting is to provide information and receive public comments on agenda items that will be discussed at the Codex Committee on Food Additives and Contaminants (CCFAC), which will be held in The Hague, The Netherlands, on March 12–16, 2001. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Thirty-third Session of the CCFAC and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, February 13, 2001, from 10 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 1409, Federal Office Building 8, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204. Reference documents will be available for review in the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the world wide web at the following address: *http://www.fao.org/waicent/faoinfo/ECONOMIC/esn/codex/ccfac33/fa01—01e.htm.* Submit one original and two copies of written comments to the FSIS Docket Room at the address above and reference docket number 01–001N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861 South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250. Telephone (202) 205–7760; Fax: (202) 720–3157. If you plan to attend the meeting, please contact Angela Evans, Office of Premarket Approval, FDA by fax (202) 418–3131 or e-mail (*angela.evans@cfsan.fda.gov*). Persons requiring a sign language interpreter or other special accommodations should notify Mr. Patrick Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The CCFAC establishes or endorses maximum or guideline levels for individual food additives, for contaminants (including environmental contaminants) and for naturally occurring toxicants in foodstuffs and animal feeds. In addition, the Committee prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); recommends specifications of identity and purity for food additives for adoption by the Commission; considers methods of analysis for their determination in food; and considers and elaborates standards or codes for related subjects such as the labelling of food additives when sold as such, and food irradiation. The Committee is chaired by The Netherlands.

These provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda.
2. Matters Referred from other Codex Committees.
3. Summary Reports of the 55th and 56th Meetings of the Joint FAO/WHO Expert Committee on Food Additives.
4. Action Required as a Result of Changes in ADI Status and other Toxicological Recommendations.
5. Discussion Paper on the Application of Risk Analysis Principles for Food Additives and Contaminants.

Food Additives

1. Endorsement and/or Revision of Maximum Levels for Food Additives in Codex Standards.
2. Consideration of the Codex General Standard for Food Additives (GSFA).
(a) Discussion Paper on the Relationship Between Codex Commodity Standards and the Further Development of the GSFA.
(b) Comments on the Food Category System of the GSFA.
(c) Revised Table 1, including Benzoates, of the Codex General Standard for Food Additives.
(d) Comments on the Use of Food Additives as Carriers.
3. Discussion Paper on Processing Aids.
4. (a) Proposed Draft Revision to the Codex General Standard for Irradiated Foods.
(b) Proposed Draft Revision to the Recommended International Code of Practice for the Operation of Irradiation Facilities Used for the Treatment of Foods.
5. Specifications for the Identity and Purity of Food Additives Arising from the 55th JECFA.
6. Proposed Amendments to the International Numbering System, including Technological Functions and Functional Classes/Sub-Classes.

Contaminants

1. Endorsement and/or Revision of Maximum Levels for Contaminants in Codex Standards.

2. Codex General Standard for Contaminants and Toxins in Foods (GSCT).

(a) Comments on the Agreed Position of the Codex Committee on Pesticide Residues on Setting Extraneous Maximum Residue Limits (EMRLs).

(b) Schedule 1 of the Proposed Draft Codex General Standard for Contaminants and Toxins in Foods.

(c) Comments on the Methodology and Principles for Exposure Assessment in the Codex General Standard for Contaminants and Toxins in Foods.

(d) Comments on the Technical Annex on Distribution Curves of Contaminants in Food Products.

3. Mycotoxins in Food and Feed.

(a) Comments on the Draft Maximum Level for Aflatoxin M_1 in Milk.

(b) Proposed Revisions to the Sampling Plan for Aflatoxins in raw Peanuts.

(c) Comments on the Proposed Draft Maximum Level for Ochratoxin A in Cereals and Cereal Products.

(d) Proposed Draft Code of Practice for the Prevention of Patulin Contamination in Apple Juice and Apple Juice Ingredients in Other Beverages.

(e) Proposed Draft Code of Practice for the Prevention of Mycotoxin Contamination in Cereals, Including Annexes on Ochratoxin A, Zearalenone and Fumonisin.

4. Industrial and Environmental Contaminants in Foods.

(a) Comments on the Draft Code of Practice for Source Directed Measures to Reduce Contamination of Food with Chemicals.

(b) Standard Format for Codes of Practice.

(c) Comments on Draft Maximum Levels for Lead.

(d) Comments on the Draft Guideline Level and Proposed Draft Maximum Levels for Cadmium.

(e) Position Paper on Dioxins and Dioxin-Like PCBs.

(f) Proposed Draft Code of Practice for Source Directed Measures to Reduce Dioxin Contamination of Foods.

(g) Position Paper on Chloropropanols.

General Issues

1. Priority List of Food Additives, Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JECFA.

2. Other Business and Future Work.

(a) Comments on Methods of Analysis for the Determination of Food Additives and Contaminants in Foods.

(b) Comments on the Draft Revision to the Codex Standard for Food Grade Salt: Packaging, Transportation and Storage.

Each issue listed will be fully described in documents distributed, or to be distributed, by The Netherlands' Secretariat to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: January 22, 2001.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 01–2575 Filed 1–29–01; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council; Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Tucson, Arizona, February 15–17, 2001. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 15–17, 2001. A tour of local projects will be held on February 15 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the InnSuites, 475 North Granada, Tucson, Arizona. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370. Individuals also may fax their names and proposed agenda items to (209) 536–9089.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 9 will have the opportunity to address the Council at those sessions.

Dated: January 24, 2001.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 01–2509 Filed 1–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2001 Panel of the Survey of Income and Program Participation, Wave 2 Topical Modules.

Form Number(s): SIPP/CAPI Automated Instrument, SIPP 21205(L) Director's Letter.

Agency Approval Number: 0607–0875.

Type of Request: Revision of a currently approved collection.

Burden: 80,635 hours.

Number of Respondents: 78,750.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 2 Topical Module interview for the 2001 Panel of the Survey of Income and Program Participation (SIPP). We also request

approval for a few replacement questions in the reinterview instrument. The core SIPP instrument, Wave 1 topical modules, and reinterview instrument were cleared previously. The reinterview instrument will be used for quality control purposes. We are also seeking continued clearance for the SIPP Methods Panel instrument field testing to be conducted in June and July 2001. The test targets SIPP Wave 1 items and sections that require thorough and rigorous testing in order to improve the quality of core data. The experiment is conducted under the direction of the Methods Panel Team, which is committed to delivering an improved and less burdensome instrument for use in the 2004 SIPP Panel.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2001 SIPP Panel is scheduled for three years and will include nine waves beginning February 1, 2001.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as ''topical modules.'' The topical modules for the 2001 Panel Wave 2 are Work Disability History, Education and Training History, Marital History, Fertility History, Migration History, and Household Relationships. Wave 2 interviews will be conducted from June through September 2001.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 25, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–2574 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census Covering the Retail Trade and Accommodation and Food Services Sectors

ACTION: Proposed collection, comment request.

SUMMARY: The Department of Commerce, 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 proposed and/or 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 March 30, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Fay Dorsett, U. S. Census Bureau, Room 2679, Building 3, Washington DC 20233–0001 (301–457–2687 or via the Internet at *fdorsett@census.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

The economic census, conducted under authority of Title 13, United States Code (U.S.C.), is the primary source of facts about the structure and functioning of the Nation's economy. Economic statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The 2002 Economic Census covering retail trade and accommodation and food services sectors (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of more than 1.6 million establishments. The information collected will produce basic statistics by kind of business on the number of establishments, sales, payroll, and employment. It will also yield a variety of subject statistics, including sales by merchandise line, sales by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires, and other electronic data collection methods.

II. Method of Collection

A. Mail Selection Procedures

The retail trade and accommodation and food services sectors of the economic census will select establishments for their mail canvasses from the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) it must be classified in the retail trade or accommodation and food services sector; (ii) it must be an active operating establishment of a multi-establishment firm (i.e., a firm that operates at more than one physical location), or it must be a single-establishment firm with payroll (i.e., a firm operating at only one physical location); and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

1. Establishments of Multi-Establishment Firms

Selection procedures will assign all active operating establishments of multi-establishment firms to the mail component of the potential respondent universe. We estimate that the 2002 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 630,000 establishments of multi-establishment firms.

2. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe. This study will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry or kind of business. This payroll size distinction will affect selection as follows:

(a) Large Single-Establishment Firms

Selection procedures will assign single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the 2002 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 482,000 large single-establishment firms.

(b) Small Single-Establishment Firms

Selection procedures will assign a sample of single-establishment firms having annualized payroll below the cutoff for their industry to the mail component of the potential respondent universe. Sampling strata and corresponding probabilities of selection will be determined by a study of the potential respondent universe conducted shortly before mail selection operations begin. We estimate that the 2002 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 114,000 small single-establishment firms selected in this sample.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. Generally, we will not include these small employers in the census mail canvasses. However, administrative records sometimes have fundamental industry classification deficiencies that make them unsuitable for use in producing detailed industry statistics by geographic area. When we find such a deficiency, we will mail the firm a census classification form. We estimate that the 2002 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 387,000 small single-establishment firms that receive these forms.

III. Data

OMB Number: Not available.

Form Number: The 33 standard and seven classification forms used to collect information from businesses in these sectors of the Economic census are tailored to specific business practices and are too numerous to list separately in this notice. Requests for information on the proposed content of the forms should be directed to Fay Dorsett, U.S. Census Bureau, Room 2679, Building 3, Washington DC 20233–0001 (301–457–2687 or via the Internet at *fdorsett@census.gov).*

Type of Review: Regular review.

Affected Public: State or local governments, businesses, or other for profit or non-profit institutions or organizations.

Estimated Number of Respondents:

Retail Trade (Standard Form)—838,000
Retail Trade (Classification Form)—169,000
Accommodation and Food Services (Standard Form)—386,000
Accommodation and Food Services (Classification Form)—218,000
Total—1,611,000

Estimated Time Per Response:

Retail Trade (Standard Form)—1.00 hours
Retail Trade (Classification Form)—.20 hours
Accommodation and Food Services (Standard Form)—.95 hours
Accommodation and Food Services (Classification Form)—.20 hours

Estimated Total Annual Burden Hours:

Retail Trade (Standard Form)—838,000
Retail Trade (Classification Form)—33,800
Accommodation and Food Services (Standard Form)—366,700
Accommodation and Food Services (Classification Form)—43,600
Total—1,282,100

Estimated Total Annual Cost:

Retail Trade (Standard Form)—$12,838,160
Retail Trade (Classification Form)—$517,816
Accommodation and Food Services (Standard Form)—$5,617,844
Accommodation and Food Services (Classification Form)—$667,952
Total—$19,641,772

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, USC, Sections 131 and 224.

IV. Request 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: January 22, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–2514 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census Covering the Wholesale Trade Sector

ACTION: Proposed collection, comment request.

SUMMARY: The Department of Commerce, 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 proposed and/or 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 April 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument(s) and instructions should be directed to Donna Hambric, U.S. Census Bureau, Room 2682, Building 3, Washington DC 20233–0001 (301–457–2725 or via the Internet at donna.lee.hambric@census.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The economic census, conducted under authority of Title 13, United States Code (USC), is the primary source of facts about the structure and functioning of the Nation's economy. Economic statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The 2002 Economic Census covering the wholesale trade sector (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of more than 480,000 establishments. The information collected will produce basic statistics by kind of business on the number of establishments, sales, payroll, and employment. It will also yield a variety of subject statistics, including sales by commodity line, sales by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires, spreadsheet reporting, and other electronic data collection methods.

II. Method of Collection

Mail Selection Procedures

The wholesale trade sector of the economic census will select establishments for its mail canvass from the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) it must be classified in the wholesale trade sector; (ii) it must be an active operating establishment of a multi-establishment firm (i.e., a firm that operates at more than one physical location), or it must be a single-establishment firm with payroll (i.e., a firm operating at only one physical location); and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

1. Establishments of Multi-Establishment Firms

Selection procedures will assign all active operating establishments of multi-establishment firms to the mail component of the potential respondent universe. We estimate that the 2002 Economic Census mail canvass for the wholesale trade sector will include approximately 124,800 establishments of multi-establishment firms.

2. Single-Establishment Firms With Payroll

Selection procedures will assign all single-establishment firms having annualized payroll (from Federal administrative records) to the mail component of the potential respondent universe. We estimate that the 2002 Economic Census mail canvass for the wholesale trade sector will include approximately 355,200 establishments of single-establishment firms.

III. Data

OMB Number: Not available.

Form Number: The 40 standard forms used to collect information from businesses in this sector of the Economic Census are tailored to specific business practices and are too numerous to list separately in this notice. Requests for information on the proposed content of the forms should be directed to Donna Hambric, U.S. Census Bureau, Room 2682, Building 3, Washington DC 20233–0001 (301–457–2725 or via the Internet at *donna.lee.hambric@census.gov).*

Type of Review: Regular review.

Affected Public: State or local governments, businesses, or other for profit or non-profit institutions or organizations.

Estimated Number of Respondents: 480,000.

Estimated Time Per Response: 1.50 hours.

Estimated Total Annual Burden Hours: 720,000 hours.

Estimated Total Annual Cost: $11,030,400.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 131 and 224.

IV. Request 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: January 22, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–2515 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census Construction Sector Refile Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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 proposed and/or 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 April 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James E. Kristoff, Bureau of the Census, Room 2129, Building 4, Washington, DC 20233–6100, and 301–457–4631 or email at James.E.Kristoff@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial

census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public.

The 2002 North American Industry Classification System (NAICS) will introduce a major revision to the construction sector. In order to update the 2002 Economic Census mailing list, the Census Bureau must collect additional information from selected construction businesses. This information will permit us to introduce an efficient sample, minimizing the reporting burden we impose on construction establishments.

These changes to NAICS for the construction sector will be implemented in the 2002 Economic Census. The failure to collect this additional classification information prior to the economic census would substantially increase the number of sampled construction establishments, result in many businesses receiving the incorrect form, and jeopardize the Census Bureau's ability to implement NAICS in the economic census.

II. Method of Collection

The Census Bureau will mail out Form NC–9926 to the following groups of establishments: (1) any single unit construction establishment that is only partially coded or (2) any single unit construction establishment that is currently classified in a NAICS industry that will be split into two or more NAICS industries for the 2002 Economic Census.

The form will contain a list of codes and descriptions describing diverse construction activities. Respondents simply check the box that best describes their business activity or describe their business activity if no box is appropriate.

III. Data

OMB Number: Not Available.

Form Number: NC–9926.

Type of Review: Regular Review.

Affected Public: Businesses or Other for Profit Organizations, Small Businesses or Organizations, Non-profit Institutions, and State or Local Governments.

Estimated Number of Respondents: 150,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 12,500 hours.

Estimated Total Annual Cost: $190,000.

IV. Request 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: January 23, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer.

[FR Doc. 01–2525 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census General Refile Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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 proposed and/or 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 April 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James E. Kristoff, Bureau of the Census, Room 2129, Building 4, Washington, DC 20233–6100, and 301–457–4631 or email at James.E.Kristoff@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public.

This data collection, Form NC–9923 is designed to collect information needed to assign an appropriate NAICS industry classification. This form will be mailed to: (1) establishments with a significant amount of receipts but without payroll, (2) new businesses with large amounts of payroll but with little or no industry classification information, and (3) establishments misclassified as farms but reporting large amounts of non-farm payroll. Establishments with significant amounts of receipts but without payroll are normally excluded from the economic census. This data collection will not only determine accurate NAICS classifications, but will also identify whether or not these establishments have paid employees.

New businesses are assigned industry classifications by the Social Security Administration (SSA). However, many of these businesses do not provide sufficient information to assign an industry code. This refile operation will ensure a proper NAICS classification assignment, ensuring that an appropriate economic census questionnaire is mailed to all businesses.

Finally, establishments currently classified as farms and reporting substantial amounts of non-farm payroll may be misclassified and excluded from the 2002 Economic Census. This refile operation will identify the appropriate NAICS classification for these establishments and determine whether or not these establishments are in scope of the 2002 Economic Census.

In addition to the NC–9923 form, these establishments will also receive a

new Company Affiliation/Locations of Operation Flyer. This flyer will allow the Census Bureau to identify companies that operate multiple locations prior to the 2002 Economic Census mailout. This form will be tested and evaluated and, if effective, will be used in the 2002 Economic Census.

The Census Bureau is not requesting any economic data in this collection. The collection of this NAICS information will greatly reduce processing costs and ease reporting burden for the 2002 Economic Census data collection.

II. Method of Collection

The Census Bureau will mail out Form NC–9923 to the following groups: (1) large establishments without a detailed NAICS classification, (2) establishments with significant receipts but without payroll, and (3) establishments currently classified as farms with substantial amounts of non-farm payroll.

The form will contain a list of codes and descriptions describing business activities. Respondents simply check the box that best describes their business activity or describe their business activity if no box is appropriate.

The Company Affiliation flyer will ask the respondent to indicate if they are part of or own another company. If the respondent indicates it is part of or owns another company, the Census Bureau will link those establishments prior to the mailout of the 2002 Economic Census.

III. Data

OMB Number: Not Available.

Form Number: NC–9923, Company Affiliation/Locations of Operation Flyer.

Type of Review: Regular Review.

Affected Public: Businesses or Other for Profit Organizations, Small Businesses or Organizations, Non-profit Institutions, State or Local Governments, and Farms.

Estimated Number of Respondents: 200,000.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 33,333 hours.

Estimated Total Annual Cost: $506,662

IV. Request 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: January 23, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer.

[FR Doc. 01–2526 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on February 13, 2001, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Follow-up from previous meeting.
3. Laser topics.
4. Infrared Imaging topics.
5. Bureau of Export Administration organization.
6. Presentation of papers or comments by the public.
7. New business.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., N.W., Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 11, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 23, 2001.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 01–2533 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–2001]

Foreign-Trade Zone 26—Atlanta, Georgia; Application for Subzone, Roper Corporation (Home Appliances), LaFayette, Georgia

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting special-purpose subzone status for the manufacturing and warehousing facilities of Roper Corporation (Roper), located in LaFayette, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–

81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 22, 2001.

The Roper facility (116 acres, 1,650 employees), is located at 1507 Broomtown Road, Lafayette, Georgia (Walker County). The facility is used for the manufacturing and warehousing of various types of kitchen ranges (HTS 8516.60, duty-free). Components and materials sourced from abroad (representing about 20% of all parts consumed in manufacturing) include: control panels, connectors, microwave oven modules, hinges, and thermocouples (HTS 8302.10, 8516.50, 8536.69, 8537.10 and 9025.80, duty rate ranges from 1.6% to 3.5%).

FTZ procedures would exempt Roper from Customs duty payments on the foreign components used in export production. On its domestic sales, Roper would be able to choose the duty rates during Customs entry procedures that apply to finished kitchen ranges (duty-free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 2, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 16, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, Marquis Two Tower, Suite 200, 285 Peachtree Center Avenue, NE, Atlanta, GA 30303–1229.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 22, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–2530 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1142]

Approval for Expanded Manufacturing Authority (Automotive Lighting Products) Foreign-Trade Subzone 146A, North American Lighting, Inc., Flora and Salem, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Bi-State Authority, grantee of Foreign-Trade Zone 146 (Lawrence County, Illinois), has requested authority on behalf of North American Lighting, Inc. (NAL), operator of FTZ 146A, at the NAL automotive lighting products manufacturing facilities in Flora and Salem, Illinois, to expand the scope of FTZ authority to include new manufacturing capacity under FTZ procedures and requesting authority to expand the boundaries of Subzone 146A (FTZ Doc. 22–2000, filed 5–30–2000);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 35603, 6–5–00);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, the Board hereby approves the request, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 17th day of January 2001.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–2532 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2001]

Foreign-Trade Zone 49D—Newark and Elizabeth, New Jersey; Expansion of Facilities and Manufacturing Authority—Subzone 49D, Merck & Co., Inc. Plant (Pharmaceuticals), Rahway, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ49, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR part 400), requesting on behalf of Merck & Co., Inc. (Merck), to add capacity and to expand the scope of manufacturing authority under zone procedures at Subzone 49D, at the Merck pharmaceutical plant in Rahway, New Jersey. It was formally filed on January 18, 2001.

Subzone 49D was approved by the Board in 1995 at a single site (200 acres, 2,500,000 sq. ft., 154 buildings) located at 126 Lincoln Avenue, in Rahway (Union County), New Jersey, some 10 miles south of Newark. The facility (4,100 employees) is used to produce a range of human health products. Merck is now proposing to add 8.6 acres and to expand existing buildings by 2,540,370 sq. ft. The proposed subzone would then include 154 buildings consisting of 5,040,370 sq. ft. (a 102% increase) on 208.64 acres.

The application also requests to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 49D to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic

polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

FTZ procedures would exempt Merck from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to elect the duty rates that applies to finished products (primarily duty-free for finished pharmaceuticals and up to 14.2% for intermediates) for the foreign materials noted above (duty rates ranging from duty-free to 20%). The application indicates that the expanded use of FTZ procedures will help improve Merck's international competitiveness.

The application has requested review under § 400.32(b)(1) of the FTZ Board regulations on the basis that the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 1, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 16, 2001).

Copies of the applications will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, One Gateway Center, 9th floor, Newark, New Jersey 07102.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: January 18, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–2512 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2001]

Foreign-Trade Zone 24—Wilkes-Barre/Scranton, Pennsylvania; Expansion of Facilities and Manufacturing Authority—Subzone 24B, Merck & Co., Inc. Plant (Pharmaceuticals), Riverside, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Eastern Distribution Center, Inc., grantee of FTZ 24, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR part 400), requesting on behalf of Merck & Co., Inc. (Merck), to add capacity and to expand the scope of manufacturing authority under zone procedures at Subzone 24B, at the Merck pharmaceutical plant in Riverside, Pennsylvania. It was formally filed on January 18, 2001.

Subzone 24B was approved by the Board in 1994 at a single site (364 acres, 650,000 sq. ft., 68 bldgs.) located at First Street and Avenue C in Riverside (Northumberland County), Pennsylvania, some 60 miles southeast of Scranton. The facility (620 employees) is used to produce a range of human health products. Merck is now proposing to add 50 buildings and to expand existing buildings for a total increase of 592,592 sq. ft. The proposed subzone would then include 118 bldgs. consisting of 1,242,592 sq. ft. (a 91% increase) on 364 acres.

The application also requests to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 24B to include additional general categories of inputs that have recently been approved by the Board for other pharmaceutical plants. They include chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

FTZ procedures would exempt Merck from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to elect the duty rates that applies to finished products (primarily duty-free for finished pharmaceuticals and up to 14.2% for intermediates) for the foreign materials noted above (duty rates ranging from duty-free to 20%). The application indicates that the expanded use of FTZ procedures will help improve Merck's international competitiveness.

The application has requested review under § 400.32(b)(1) of the FTZ Board regulations on the basis that the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 1, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 16, 2001).

Copies of the applications will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, One Commerce Square, 228 Walnut St., 850, P.O. Box 11698, Harrisburg, Pennsylvania 17108–1698.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: January 18, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–2513 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2001]

Proposed Foreign-Trade Zone—Amarillo, Texas, Area Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Amarillo, Texas, to establish a general-purpose foreign-trade zone at sites in the Amarillo, Texas, area, within/adjacent to the Amarillo Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 22, 2001. The applicant is authorized to make the proposal under Texas Revised Civil Statutes Article 1446.01.

The proposed new zone would consist of sites serving Amarillo and the Texas High Plains region: *Site 1* at the 4,000-acre Amarillo International Airport and adjacent industrial park property, 10801 Airport Boulevard, Amarillo; *Site 2* (6 acres)—Panhandle Container Service Center, 1201 South Johnson Street, Amarillo; *Site 3* (345 acres)—Hutchinson County Airport and industrial park, ¼ mile north of the City of Borger; *Site 4* (68 acres)—Ferguson Business Park, 650 Wilson Avenue, Dumas; *Site 5* (95 acres)—Industrial Park East, State Highway 60, Pampa; *Site 6* (213 acres)—PEDCO Park, Tying Avenue, Pampa; *Site 7* (.52 acres)—Donley site, ½ block from State Highway 87, Tulia; *Site 8* (6 acres)—RCD site, adjacent to the Burlington Northern Santa Fe Railroad in the 1000 block of N.W. 6th , Tulia; *Site 9* (10 acres)—Anderson site, State Highway 87, Tulia; and, *Site 10* (3 acres)—Bivens site, I–27 near the intersection of State Highway 86, Tulia. The proposed zone project represents a joint effort by the City and the Amarillo Economic Development Corporation to further promote trade and economic development within Amarillo and the surrounding High Plains Region. The facilities are publicly-owned, except for Site 2 and a few parcels within Site 1, and Site 3 is part of a Borger/Hutchinson County Enterprise Zone.

The application indicates a need for foreign-trade zone services in the Amarillo area and the Texas High Plains region. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on February 22, 2001, at 9:00 a.m., Kritser Conference Room, Second Level, Amarillo International Airport Terminal, 10801 Airport Boulevard, Amarillo, Texas 79111.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 2, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 16, 2001).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Assistant City Manager, City Hall, City of Amarillo, 509 S.E. Seventh Avenue, Amarillo, TX 79105–1971, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230

Dated: January 23, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–2529 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1139]

Grant of Authority; Establishment of a Foreign-Trade Zone, Waco, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the City of Waco, Texas (the Grantee), has made application to the Board (FTZ Docket 8–2000, filed 3/6/00 and amended on 8/16/00), requesting the establishment of a foreign-trade zone at sites in Waco, Texas, adjacent to the Dallas/Fort Worth Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 13938, 3/15/00 and 65 FR 51796, 8/25/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 246, at the sites described in the application, as amended, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 17th day of January 2001.

Foreign-Trade Zones Board.

Norman Y. Mineta,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–2531 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 and A–580–816]

Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products From Korea; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative reviews of Certain Cold-Rolled Carbon Steel Flat Products & Certain Corrosion-Resistant Carbon Steel Flat Products from Korea. These reviews cover the period August 1, 1999 through July 31, 2000.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Marlene Hewitt or Jim Doyle, Office of

AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC; telephone (202) 482–1385 or 482–0159, respectively.

SUPPLEMENTARY INFORMATION: Due to the complexity of issues involved in these cases, it is not practicable to complete these reviews within the original time limit. The Department is extending the time limit for completion of the preliminary results from May 3, 2001 until August 31, 2001, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended. See memorandum to Joseph A. Spetrini from Edward Yang regarding the extension of the case deadline. The time limit for the final results would remain at 120 days after the preliminary results are issued. This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. Sec. 1675 (a)(3)(A)).

Dated: January 18, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 01–2511 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above (''DRAMs'') From the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482–0651, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On July 7, 2000, the Department published a notice of initiation of administrative review of the antidumping duty order on DRAMs from Korea, covering the period May 1, 1999, through April 30, 2000 (65 FR 131).

The antidumping dumping duty order for DRAMs from Korea was revoked, pursuant to the sunset procedures established by statute, effective January 1, 2000. *See Dynamic Random Access Memory Semiconductors (''DRAMs'') of One Megabit and Above From the Republic of Korea; Final Results of Full Sunset Review and Revocation of Order,* 65 FR 1471366 (October 5, 2000). However, we are conducting this review to cover sales of the subject merchandise made in the United States by Hyundai and LG during the 8-month period from May 1, 1999, until the effective date of the revocation, December 31, 1999. The preliminary results are currently due no later than January 30, 2001.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than May 30, 2001. *See* Decision Memorandum from Thomas Futtner to Holly A. Kuga, dated January 10, 2001, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 22, 2001.

Melissa G. Skinner,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–2528 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–818, A–489–805)

Certain Pasta From Italy and Turkey: Extension of Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson at (202) 482–3797, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On September 6, 2000, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 1999 to June 30, 2000 (65 FR 53980). The preliminary results are currently due no later than April 2, 2001.

Extension of Preliminary Results of Reviews

We determine that it is not practicable to complete the preliminary results of

these reviews within the original time limits. Therefore, we are extending the time limits for completion of the preliminary results until no later than June 21, 2001. *See* Decision Memorandum from Melissa Skinner to Holly A. Kuga, dated January 16, 2001, which is on file in the Central Records Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 22, 2001.

Melissa Skinner,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 01–2517 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821, C–560–813, C–791–810, C–549–818]

Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, South Africa, and Thailand: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determinations in countervailing duty investigations.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determinations in the countervailing duty (''CVD'') investigations of certain hot-rolled carbon steel flat products from India, Indonesia, South Africa, and Thailand from February 7, 2001 until no later than March 26, 2001. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds (India), at (202) 482–6071; Stephanie Moore (Indonesia), at (202) 482–3692; Sally Gannon (South Africa), at (202) 482–0162; and Dana Mermelstein (Thailand), at (202) 482–1391, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

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 codified at 19 CFR Part 351 (2000).

Extension of Due Date for Preliminary Determinations

On December 4, 2000, the Department of Commerce (''the Department'') initiated the CVD investigations of certain hot-rolled carbon steel flat products from India, Indonesia, South Africa, and Thailand. *See Notice of Initiation of Countervailing Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, South Africa, and Thailand,* 65 FR 77580 (December 12, 2000). Currently, the preliminary determinations are due no later than February 7, 2001. However, pursuant to section 703(c)(1)(B) of the Act, we have determined that these investigations are ''extraordinarily complicated'' and are therefore extending the due date for the preliminary determinations by 45 days to no later than March 26, 2001.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) the administering authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in each case all concerned parties are cooperating. Regarding the second requirement, we find that each of these four cases is extraordinarily complicated for the following reasons.

India

The Indian CVD investigation is extraordinarily complicated because of the number of firms whose activities must be investigated and the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters in India. There are five producers which exported subject merchandise to the United States during the period of investigation. In order to determine the extent to which alleged countervailable subsidies are used, a large amount of information must be analyzed by the Department for these five companies. Given the time constraints of this investigation, we consider the information to be analyzed for these five companies to be voluminous.

Indonesia

The Indonesian CVD investigation is extraordinarily complicated because of the novelty of the issue presented and the need to determine the extent to which particular countervailable subsidies are used by the producer of the subject merchandise and its subsidiary. Certain of the alleged subsidies, including equity infusions, were provided by the Government of Indonesia to a company affiliated with the producer of the subject merchandise, rather than to the producer itself. Thus, this case presents an unusual set of facts which requires additional attention and analysis with respect to determining whether such alleged subsidies provided a countervailable benefit to the producer of the subject merchandise.

South Africa

The South African investigation is extraordinarily complicated because a number of the alleged programs are complex or novel. For example, the Department must analyze complicated equity financing issues, involving extensive and complex financial analysis, as well as novel tax issues, including advanced depreciation. In addition, the Department is examining whether one of the companies was ''creditworthy'' when the government provided equity and loans to the company (*i.e.,* whether a private investor would have provided the types of financing that the government provided) which demands that the Department analyze significant amounts of information.

Thailand

The Thai CVD investigation is extraordinarily complicated because of the number and complexity of the

alleged programs. The Department initiated on 20 programs in this investigation, over half of which have never been investigated before. The alleged subsidies include the types of programs that are among the most complex ever handled by the Department, including government direction of credit, debt restructuring, transnational subsidies, and the provision of electricity at preferential rates, among others.

Accordingly, we deem these investigations to be extraordinarily complicated and determine, with regard to the third requirement noted above, that additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations to no later than March 26, 2001.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: January 18, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2516 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, February 13, 2001, from 8:30 a.m. to 4:00 p.m. The Advanced Technology Program Advisory Committee is composed of eight members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education,and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget,and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an Update on ATP, an NRC Study Update, a report on the Program Off Site, a report from the Economic Assessment Office, an Update on New Competition, a discussion of Outreach Efforts, and a presentation on the University Parks Initiative. Discussions scheduled to begin at 8:30 a.m. and to end at 9:30 a.m. and to begin at 3:00 p.m. and to end at 4:00 p.m. on February 13, 2001, on the ATP budget issues and staffing of positions will be closed.

DATES: The meeting will convene February 13, 2001, at 8:30 a.m. and will adjourn at 4:00 p.m. on February 13, 2001.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Employees Lounge, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Janet R. Russell, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 22, 2001 that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 22, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–2527 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012201C]

Southeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA)

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Roberts Sadler, Southeast Regional Office, 9721 Executive Center Drive, St. Petersburg, FL 33702 (phone 727-570-5326).

SUPPLEMENTARY INFORMATION:

I. Abstract

The reporting burden for this family of forms is comprised of mandatory dealer reporting and dockside interviews. Mandatory dealer reporting is authorized under 50 CFR 622.5 and 635.5 and is used to monitor Federally-mandated fishery quotas. Dockside interviews with fishermen are used to collect biological data from fishing trips. These data consist of the measurement and weights of fish, fishing effort and fishing area.

II. Method of Collection

Mandatory dealer reporting is accomplished with forms provided by the Science and Research Director, Southeast Fisheries Science Center. Dockside interviews are conducted on site and data are recorded by trained Federal port agents.

III. Data

OMB Number: 0648-0013.

Form Number: NOAA Form 88-30.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations (seafood dealers and fishermen).

Estimated Number of Respondents: 5,500.

Estimated Time Per Response: 15 minutes for a dealer report in the golden crab, red snapper, rock shrimp, and Puerto Rican prohibited coral fisheries; 5 additional minutes to fax or mail a red snapper dealer report; 5 minutes for a dealer report in the snowy grouper, tilefish, and mackerel fisheries; 5 minutes for an annual vessel interview; 10 minutes for other interviews; 10 minutes for a dealer and vessel report in the eastern Gulf of Mexico runaround gill mackerel fishery; 8 minutes for a dealer report for swordfish and sharks; 17 minutes for a swordfish importer report; and 4.5 minutes for a wreckfish dealer report.

Estimated Total Annual Burden Hours: 3,256.

Estimated Total Annual Cost to Public: $0.

IV. Request 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: January 19, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–2415 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of final evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Delaware, Florida, Massachusetts, New Hampshire, Oregon, and Virginia Coastal Management Programs, and the Elkorn Slough (California), Narragansett Bay (Rhode Island), Sapelo Island (Georgia), and Tijuana River (California) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of coastal management programs, and the operation and management of NERRs.

The states of Delaware, Florida, Massachusetts, New Hampshire, Oregon and Virginia were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards.

Elkhorn Slough, Narragansett Bay, Sapelo Island, and Tijuana River NERRs were found to be adhering to programmatic requirements of the NERR System. Copies of these final evaluation findings may be obtained upon written request from: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, or *Margo.E.Jackson@noaa.gov,* (301) 713–3155 Extension 114.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.)

Capt. Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–2524 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants to fill vacant fishing (primary) and conservation (alternate) seats on its Sanctuary Advisory Council (Council). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by February 19, 2001.

ADDRESSES: Application kits may be obtained from Brady Phillips at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California, 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Brady Phillips at (831) 647–4237, or Brady.Phillips@noaa.gov.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 (the current Council has served since March 1998) to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary along the central California Coast.

The Council's nineteen voting members represent a variety of local user groups, the general public, and seven local, state and federal governmental jurisdictions. In addition, the respective managers for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and the Monterey Bay National Marine

Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

The Council is supported by three working groups: the Research Activity Panel (RAP) chaired by the Research Representative, the Sanctuary Education Panel (SEP) chaired by the Education Representative, and the Conservation Working Group (CWG) chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection. The working groups are composed of experts from the appropriate fields of interest and all meet monthly, serving as invaluable advisors to the Council and the Sanctuary Superintendent. Several task forces have been established to assist in developing specific programmatic goals. Most notable is the formation of the Business and Tourism Activity Panel (BTAP), whose purpose is to strengthen economic partnerships with the Sanctuary Program.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manger by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 24, 2001.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–2556 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011701D]

Caribbean 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 Caribbean Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on February 21, 2001, from 1 p.m. until 5 p.m. The closed session will take place after 5 p.m.

ADDRESSES: The meeting will be held at the Wyndham Sugar Bay Beach Club and Resort, 6500 Estate Smith Bay, St. Thomas, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577; telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 103rd regular public meeting to discuss the items contained in the following agenda:

Call to Order

Adoption of Agenda

Consideration of 102nd Council Meeting Summary Minutes

Presentation on Proposed Marine Protected Areas and Parks for the U.S.V.I.

Dolphin/Wahoo Fishery Management Plan Final Action

Queen Conch FMP Amendment - Proposed Rule

Other Business

Next Council Meeting

Closed Session for Administrative Matters

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council,(see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: January 22, 2001.

Richard W. Surdi,

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

[FR Doc. 01–2413 Filed 1–29–01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012401C]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Bering Sea/Aleutian Islands Crab Rationalization Committee will hold a meeting.

DATES: The meeting will be held on February 15-16, 2001, beginning at 9:00 a.m. on February 15.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center (AFSC), 7600 Sand Point Way NE, in Room 2039, Building 4, Seattle, WA. *Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Council staff, phone: 907-271-2809.

SUPPLEMENTARY INFORMATION: The Committee will begin to develop alternatives, elements and options for crab rationalization which they will forward to the North Pacific Fishery Management Council for consideration in April 2001.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during this meeting. Action will be restricted to those issues specifically identified 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907-271-2809 at least 7 working days prior to the meeting date.

Dated: January 24, 2001.

Richard W. Surdi,

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

[FR Doc. 01–2577 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011701E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Groundfish Management Process Committee (GMPC) will hold a work session, which is open to the public.

DATES: The GMPC will meet Wednesday, February 14, 2001, from 10 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific States Marine Fisheries Commission, Large Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR 97027; (503) 650-5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck or Don McIsaac, Pacific Fishery Management Council, (503) 326-6352.

SUPPLEMENTARY INFORMATION: The formation of this Ad-Hoc committee is in response to a Council request (November 2000) for a formal review of the current groundfish management process. This is the second meeting of the committee, and the primary purpose of this work session is to refine the recommendations developed at the committee's previous meeting and prepare the committee's report to the Council. Specifically, the GMPC will review a draft 2-year groundfish management schedule, refine several other alternative management schedules, and discuss alternative funding sources to shore up the Council budget. The committees's recommendations will be reported to the Council at the March 2001 Council meeting.

Although non-emergency issues not contained in the GMPC meeting agenda may come before the GMPC for discussion, those issues may not be the subject of formal GMPC action during the meeting. GMPC action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 GMPC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: January 22, 2001.

Richard W. Surdi,

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

[FR Doc. 01–2414 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012401A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Marine Reserve Process Design Committee (MRPDC) will hold a working meeting which is open to the public.

DATES: The MRPDC working meeting will begin Tuesday, February 13, 2001, at 10 a.m. and end by 4 p.m. the same day.

ADDRESSES: The meeting will be held in the Cascade Room of the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, OR; telephone: 503–249–7621.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Economic Analysis Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the MRPDC meeting is to design a process, project, and budget for Phase II of the Council's consideration of marine reserves. The Pacific Fishery Management Council (Council) has specified a two-phase process for considering whether or not to recommend marine reserves. The first phase was a conceptual evaluation that concluded in September 2000 with a Council determination that marine reserves have a role in fishery management for the groundfish fishery. During the second phase, options for the design and location of marine reserves will be developed.

Although non-emergency issues not specified the agenda may come before the MRPDC for discussion, those issues may not be the subject of formal MRPDC action during this meeting. MRPDC 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 MRPDC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 24, 2001.

Richard W. Surdi,

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

[FR Doc. 01–2579 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012401B]

South 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 South Atlantic Fishery Management Council will hold a meeting of its Snapper Grouper Assessment Group in Atlantic Beach, FL.

DATES: The Snapper Grouper Assessment Group will meet February 20, 2001, from 1 p.m. until 5 p.m. and on February 21, 2001, from 8:30 a.m. until 5 p.m.

ADDRESSES: These meetings will be held at the Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, FL 32233; telephone: (904) 249-7402; fax: (904) 247-1517.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The Assessment Group will meet February 20-21, 2001 to address several issues including: Maximum Sustainable Yield (MSY), Optimum Yield (OY) and overfishing specifications for species in the snapper grouper complex; manuscripts regarding an assessment and projections for red porgy; a powerhead gear framework document; updated trends analysis; white grunt assessment inclucing age and growth data; gray snapper age and growth data; a compliance report regarding size limits; snowy grouper and golden tilefish assessment and management including the Total Allowable Catch (TAC) and the wreckfish TAC.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 12, 2001.

Dated: January 24, 2001.

Richard W. Surdi,

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

[FR Doc. 01–2576 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011201A]

Marine Mammals; File No. 358-1585

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game (Dr. Wayne L. Regelin, Responsible Party), P.O. Box 3-2000, Juneau, Alaska 99802-5526, has been issued a permit to take harbor seals (*Phoca vitulina*), spotted seals (*Phoca largha*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*), and ribbon seals (*Phoca fasciata*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249.

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On August 25, 2000, notice was published in the **Federal Register** (65 FR 51811) that a request for a scientific research permit to take harbor seals, spotted seals, ringed seals, bearded seals and ribbon seals had been submitted by the above-named organization.

Permit No. 358-1585 authorizes the Holder to capture, sample and tag a total of 1000 harbor seals, 500 spotted seals, 250 ringed seals, 250 bearded seals and 250 ribbon seals over a 5-year period throughout Alaska. A limited number of accidental mortalities are authorized for all species during capture activities. Additionally, the permit authorizes the incidental harassment of harbor seals during scat collection and aerial surveys. Export of biological samples worldwide and collection of biological samples from subsistence harvested animals is also authorized.

The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 24, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–2578 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Burma (Myanmar)

January 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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 import restraint limits for textile products, produced or manufactured in Burma (Myanmar) and exported during the period January 1, 2001 through

December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

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). Information regarding the availability of the 2001 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 30, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Burma (Myanmar) and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	100,755 dozen.
342/642	27,214 dozen.
347/348	141,157 dozen.
351/651	42,770 dozen.
448	2,483 dozen.
647/648/847	26,322 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–2541 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Station Brooklyn, New York

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of Naval Station Brooklyn, which is located in Brooklyn, New York.

Navy analyzed the impacts of the disposal and reuse of Naval Station Brooklyn in an Environmental Impact Statement (EIS), as required by NEPA. The EIS analyzed four reuse alternatives and identified the Redevelopment Plan for Naval Station Brooklyn, New York, dated March 1, 1996 (Reuse Plan), prepared by the City of New York and described in the EIS as the Reuse Plan Alternative, as the Preferred Alternative.

The Preferred Alternative proposed to use the Naval Station property for industrial, institutional, non-profit, and commercial activities and to develop open space and recreational areas. The Brooklyn Navy Yard Development Corporation replaced the City of New York as the Local Redevelopment Authority (LRA) for Naval Station Brooklyn on November 27, 2000. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR 176.20(a).

Navy intends to dispose of Naval Station Brooklyn in a manner that is consistent with the Reuse Plan. Navy has determined that the proposed mixed land use will meet the goals of achieving local economic redevelopment, creating new jobs, and providing additional recreational resources, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local zoning authority.

Background: Under the authority of the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100–526, 10 U.S.C. 2687 note (1994), the 1988 Defense Secretary's Commission on Base Realignment and Closure recommended the closure of Naval Station Brooklyn. This recommendation was approved by the Secretary of Defense, Frank Carlucci, and accepted by the One Hundred First Congress in 1989. The Naval Station closed on March 23, 1993.

Naval Station Brooklyn is situated on about 29 acres in the eastern part of the Borough of Brooklyn. The property is oriented along a north-south axis and has an irregular border.

It is bounded on the north by the East River waterfront of the Brooklyn Navy Yard Development Corporation's industrial park; on the east by the Brooklyn-Queens Expressway (BQE); on the south by Flushing Avenue; and on the west by Washington Avenue and parts of the former Brooklyn Navy Yard. The Naval Station property is surrounded by industrial and commercial activities. Residential neighborhoods are located farther north, east and south of the base.

This Record Of Decision addresses the disposal and reuse of the Naval Station property, which is surplus to the needs of the Federal Government. The surplus property covers about 29 acres and contains 36 buildings and structures that provide about 629,000 square feet of space. Buildings 1 and 2, the largest buildings on the base, supply more than half of the floor space available for redevelopment.

Navy published a Notice Of Intent in the **Federal Register** on January 31, 1997, announcing that Navy would prepare an EIS for the disposal and reuse of Naval Station Brooklyn. On February 13, 1997, Navy held public scoping meetings at New York City's Department of City Planning and at the Brooklyn Borough Hall. The scoping period concluded on March 14, 1997.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local agencies, elected officials, interested parties, and the general public on October 8, 1999, and commenced a 45-day public review and comment period. During this period, Federal, State, and local

agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. On October 21, 1999, Navy held a public hearing at the Brooklyn Borough Hall to receive comments on the DEIS.

Navy's responses to the public comments on the DEIS were incorporated in the Final EIS (FEIS), which was distributed to the public on August 11, 2000, for a review period that concluded on September 10, 2000. Navy received five letters commenting on the FEIS.

Alternatives: NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS, Navy analyzed the environmental impacts of four reuse alternatives. Navy also evaluated a ''No Action'' alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

The City of New York began to plan for reuse of the Naval Station in 1992. On March 1, 1996, the City of New York, acting as the Local Redevelopment Authority for the Naval Station, issued the Redevelopment Plan for Naval Station Brooklyn, New York.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses in four areas designated as the Northern Triangle, the BQE Frontage, the Western Industrial Sector, and the Hospital Campus. The Reuse Plan would take advantage of the property's industrial facilities and proximity to the former Brooklyn Navy Yard and minimize impacts on the historic campus of the Brooklyn Naval Hospital, which is located on the Naval Station property. It did not propose to build any new structures on the property.

The Preferred Alternative would dedicate 2.2 acres in the Northern Triangle at the northern end of the Naval Station to light industrial activities and warehouses. It would assign two acres in the BQE Frontage area, located in the southeast corner of the property at the intersection of Flushing Avenue and Williamsburg Street (facing the elevated BQE Expressway), to light industrial activities and retail stores.

The Preferred Alternative would dedicate 6.4 acres in the Western Industrial Sector at the southwest corner of the Naval Station to technology manufacturing, research, light industrial activities, and offices. It would integrate Buildings 1 and 2, the largest buildings on the base, and two smaller buildings with industrial activities in the former Brooklyn Navy Yard that is managed by the Brooklyn Navy Yard Development Corporation.

The Preferred Alternative would dedicate 18.3 acres in the center of the base, designated as the Hospital campus, to institutional and non-profit activities and to open space and recreational activities. The Reuse Plan did not propose particular uses for the buildings comprising the Hospital Campus, but these facilities could be used for day care, health care, job training, educational, and other institutional purposes.

The Naval Hospital Cemetery is located on about 1.7 acres in the eastern part of the base inside the Hospital Campus. During preparation of the Reuse Plan, Navy and the City believed that all of the burial remains had been relocated to another cemetery in 1926. Thereafter, Navy converted the Cemetery property to recreational athletic fields. After the Reuse Plan was issued in 1996, however, Navy discovered that the number of burials in the Cemetery exceeded the number that, according to records, had been relocated in 1926. As a result, Navy restored the Cemetery grounds, and this property will be preserved as a cemetery.

Navy analyzed a second ''action'' alternative, described in the FEIS as the Residential Alternative. Under this Alternative, the land uses proposed for the Northern Triangle, the Western Industrial Sector and the BQE Frontage property would be the same as those proposed by the Preferred Alternative. However, the Hospital Campus facilities would be used for residential rather than institutional purposes. This Alternative would not build any new residential units but would convert and renovate the Bachelor Officers Quarters and the single-family homes into 94 multi-family homes.

Navy analyzed a third ''action'' alternative, described in the FEIS as the Museum Alternative. Under this Alternative, the land uses proposed for the Northern Triangle and the Western Industrial Sector would be the same as those proposed by the Preferred Alternative, but the BQE Frontage and Hospital Campus facilities would be used for educational and cultural activities. This Alternative would not undertake any new construction.

Navy analyzed a fourth ''action'' alternative, described in the FEIS as the As-of-Right Alternative. Under this Alternative, the property would be redeveloped to the maximum extent permitted by New York City's zoning ordinances. Four buildings, Buildings 1 and 2, Building R–1 (the Surgeon's House), and Building R–95 (the Naval Hospital), would be retained, but the other buildings would be demolished to allow maximum development of the property. The Cemetery would be retained as open space. This Alternative would develop about 2.1 million square feet of space for retail stores, warehouses, and manufacturing activities.

Environmental Impacts: Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this surplus Federal property. The EIS addressed impacts of the Preferred Alternative, the Residential Alternative, the Museum Alternative, the As-of-Right Alternative, and the ''No Action'' Alternative for each Alternative's effects on land use and zoning, socioeconomics, community facilities and services, transportation, air quality, noise, infrastructure, cultural resources, natural resources, and petroleum and hazardous substances. This Record Of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have a significant impact on land use and would result in land uses that are compatible with existing and planned uses in the surrounding area. The Reuse Plan would redevelop the Naval Station property for use in light industrial, institutional, community, commercial, and active and passive recreational activities. Under the Reuse Plan, the property's zoning would change to permit light industrial, commercial, and community activities but not residential uses.

The Preferred Alternative would not have an impact on the socioeconomics of the surrounding area. The Reuse Plan would generate about 1,630 new direct jobs with annual earnings of about $45.7 million. These new jobs would constitute about 0.03 percent of the jobs in the City of New York. The Reuse Plan would also generate about 870 indirect jobs with annual earnings of about $24 million. It would produce about $8.3 million annually in state and local income taxes and sales taxes.

The Preferred Alternative would not have a significant impact on community services. There will be no residential use of the property under the Reuse Plan, and no new workers will move into the area as a result of the Reuse Plan. Therefore, there will not be any new demands placed on local schools. The presence of additional workers on the property, however, would slightly increase the demands placed on the resources of the two nearby hospitals.

The Preferred Alternative would not have a direct impact on local police, fire, emergency, and other community services.

The Preferred Alternative would substantially increase the amount of open space and make the Hospital Campus available to the public. About 11.2 acres of active recreational space and 8.8 acres of passive recreational space, including the 1.7-acre Naval Cemetery, would be available to the public.

The Preferred Alternative would not have a significant impact on transportation. By the year 2002, the Preferred Alternative would generate about 11,200 average daily trips to and from the property. The Naval Station property has not generated a substantial number of average daily trips since it was placed in caretaker status in 1993. Consequently, this Alternative would increase the amount of traffic in the area and cause traffic delays at the intersections of Flushing Avenue and Williamsburg Street, Flushing Avenue and Classon Avenue, and Flushing Avenue and Clinton Avenue. The traffic flow at these intersections could be improved by modifying the traffic signals. There is adequate public transportation to support the proposed redevelopment of the Naval Station property.

The Preferred Alternative would not have a significant impact on air quality. The Naval Station property is located in a severe nonattainment area for ozone and a moderate nonattainment area for carbon monoxide (CO), as regulated by the Clean Air Act, 42 U.S.C. 7401–7671q (1994). Ozone, commonly known as smog, is produced when volatile organic compounds and nitrogen oxides react in the atmosphere. The Naval Station property is in attainment for all other common air pollutants regulated under the Clean Air Act.

Carbon monoxide is produced by the burning of fossil fuels. As a result of traffic moving to and from the property, the annual emissions of CO would increase under the Reuse Plan. Nevertheless, there would not be any violation of the national standards governing emissions of carbon monoxide.

The impact on air quality from stationary sources of emissions, such as heating units, would depend upon the nature and extent of activities conducted on the property. Developers of these facilities will be responsible for obtaining the required air permits and for complying with Federal, State and local laws and regulations governing air pollution. The temporary impacts on air quality resulting from renovation activities would not be significant.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as the City of New York that do not meet one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR 93.153(c)(2)(xiv) and (xix). Therefore, the disposal of Naval Station Brooklyn will not require Navy to conduct a conformity determination.

The Preferred Alternative would have a significant noise impact on Steuben Playground, which is located across Flushing Avenue from the Naval Station property. Those who use this playground during the morning peak traffic period would experience noise levels in excess of 65 decibels arising out of the increased traffic at this time of day. This constitutes a 3.2 decibel increase in the ambient noise level, and an increase in noise in excess of three decibels with a total noise impact above 65 decibels constitutes a significant impact under New York City standards. There were insignificant impacts at the other nine sites analyzed for noise, because the increases in ambient noise levels were less than three decibels. Generally, a person cannot perceive a change in noise levels that are less than three decibels.

The Preferred Alternative would not have a significant impact on the capacity of the City of New York's utility systems. The City's water system can supply the Reuse Plan's projected daily demand of about 55,000 gallons of potable water. The proposed redevelopment of the Naval Station property would not have a significant impact on the City's wastewater treatment capacity. The City's Newtown Creek Water Pollution Control Plant can provide the Reuse Plan's daily requirement to treat 55,000 gallons of wastewater. The City also has adequate solid waste disposal capacity, and no significant impact is likely to result from the disposal of solid waste generated by the Reuse Plan.

Implementation of the Preferred Alternative would result in renovation of most of the buildings on the property. Only a few deteriorated structures would be demolished. However, it would be necessary to upgrade and renovate the utility distribution systems to provide adequate services.

The Preferred Alternative would not have a significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470f (1994), Navy conducted a cultural resources survey and determined that parts of the Naval Station property are eligible for listing on the National Register of Historic Places as two separate historic districts. The Brooklyn Navy Yard Historic District encompasses most of the buildings in the Northern Triangle, the Western Industrial Sector, and the BQE Frontage area. These were built during the World War II expansion of the Navy Yard. The United States Naval Hospital Historic District contains historically significant Nineteenth and Twentieth Century institutional, residential, and industrial buildings as well as the Naval Hospital Cemetery.

In a letter dated November 18, 1994, the New York State Historic Preservation Officer concurred in Navy's determination that the Naval Station was eligible for listing on the National Register of Historic Places. In addition, the Naval Hospital, built in 1838, and the Surgeon's House, built in 1864, have been designated as New York City Landmark Buildings by the City of New York's Landmarks Preservation Commission.

The Naval Hospital Cemetery, located on the Hospital Campus, served as the Naval Hospital's burial ground from 1824 to 1910. In 1926, Navy removed 987 burial remains from the Cemetery and interred them at Cypress Hills National Cemetery in Brooklyn. During the 1930s and 1940s, believing that all of the burial remains had been relocated, Navy converted the Cemetery property to recreational athletic fields.

During 1996 and 1997, Navy conducted documentary research and field tests and concluded that there were no records confirming the removal of about 517 burial remains. Thus, in 1999, Navy removed the recreational equipment and altered the landscape of the site to restore it as a cemetery. The Reuse Plan would preserve the Cemetery in accordance with a protective covenant that Navy will place in the deed for the Cemetery property.

Future alterations of buildings and structures in the historic districts must be conducted in accordance with the Secretary of the Interior's Standards for Rehabilitation and in accordance with the terms of the Programmatic Agreement executed by Navy, the

Advisory Council on Historic Preservation, and the State Historic Preservation Officer on June 16, 2000. As a result, there will not be any adverse effects on cultural resources. In addition, because the Naval Hospital and the Surgeon's House are City of New York landmarks, any alterations to these buildings must be reviewed and permitted by the City of New York's Landmarks Preservation Commission.

The Preferred Alternative would not have a significant impact on upland vegetation wildlife. The existing vegetation on the property consists largely of maintained lawns and ornamental and naturally occurring trees and shrubs. Since the Reuse Plan would not build any new structures on the property, the existing vegetation will remain undisturbed.

Navy determined that there were no Federally-listed threatened or endangered species, as defined by the Endangered Species Act of 1973, 16 U.S.C. 1531–1544 (1994), on the Naval Station property. Therefore, the disposal and reuse of Naval Station Brooklyn would not have an adverse effect on Federally-listed threatened or endangered species.

Implementation of the Preferred Alternative would not significantly alter the amount of impervious surface on the property. As a result, the amount of stormwater runoff would not increase. Stormwater must be managed in accordance with Federal, State, and local laws and regulations, and the acquiring entity will be responsible for restoring and building adequate drainage facilities.

The Preferred Alternative would not have an impact on floodplains. About one acre in the northeastern part of the Naval Station lies between the 100-year and 500-year floodplains, but the Preferred Alternative does not plan to develop this area. Consequently, there would be not be an impact here.

The Preferred Alternative would not have a significant impact on the environment as a result of the use of petroleum products or the use or generation of hazardous substances by the acquiring entity. Hazardous materials used and hazardous wastes generated by the Reuse Plan will be managed in accordance with Federal and State laws and regulations.

Implementation of the Preferred Alternative would not have an impact on public health and safety at the Naval Station. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of Naval Station Brooklyn and reuse of the property under the various proposed alternatives. Minority and low income populations residing within the region would not be disproportionately affected. Indeed, the direct and indirect employment opportunities and increased recreational resources generated by the Reuse Plan would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, children would only be present as visitors to the property. The Preferred Alternative would not pose any disproportionate environmental health or safety risks to children.

Mitigation: Implementation of Navy's decision to dispose of Naval Station Brooklyn does not require Navy to implement any mitigation measures. Navy will take certain other actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation.

The FEIS identified and discussed those actions that will be necessary to mitigate impacts associated with reuse of the Naval Station property. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS: Navy received comments on the FEIS from the United States Environmental Protection Agency; the New York State Department of Environmental Conservation; the City of New York's Landmarks Preservation Commission; the Fort Greene Association; and one private citizen. These comments concerned issues already discussed in the FEIS and do not require further clarification.

Regulations Governing the Disposal Decision: Since the proposed action contemplates a disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that disposals of Federal property benefit the Federal Government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highes and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historic considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the ''highest and best use'' of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property.

Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer sand dispose of base closure property closed under the DBCRA to the

Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.,* the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA, may Navy apply disposal procedures other than those in the FRMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by based closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interest, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1944), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion: The LRA's proposed reuse of Naval Station Brooklyn, reflected in the Reuse Plan, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for various purposes including industrial, institutional, commercial, open space and recreational activities. The property's location and physical characteristics as well as the current uses of adjacent property make it appropriate for the proposed uses.

The Reuse Plan responds to local economic conditions, promotes economic recovery from the impact of the closure of the Naval Station, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR parts 174 and 175, 59 FR 16123 (1994).

Although the ''No Action'' Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location and physical characteristics or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the Naval Station property.

The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy will dispose of Naval Station Brooklyn in a manner that is consistent with the City of New York's Reuse Plan for the property.

Dated: January 12, 2001.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy, (Conversion And Redevelopment).

[FR Doc. 01–2535 Filed 1–29–01; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Shelton-Kitsap Transmission Line Rebuild

AGENCY: Bonneville Power Administration (BPA), U.S. Department of Energy (DOE).

ACTION: Finding of no significant impact (FONSI) and floodplain statement of findings.

SUMMARY: This notice announces BPA's proposal to rebuild its existing Shelton-Kitsap No. 2 115-kilovolt (kV) transmission line as a double-circuit 230-kV line in the existing right-of-way (ROW), in order to improve system capability and reliability. BPA has prepared an Environmental Assessment (EA) (DOE/EA–1342) evaluating the proposed project. Based on the analysis in the EA, BPA has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement (EIS) is not required and BPA is issuing this FONSI.

A finding is included that there is no practicable alternative to locating the project within a 100-year floodplain.

ADDRESSES: For copies of this FONSI or the EA, please call BPA's toll-free document request line: 800–622–4520. It is also available at the BPA, Environment, Fish and Wildlife website: www.efw.bpa.gov.

FOR FURTHER INFORMATION, CONTACT: Dawn R. Boorse—KEC–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone number 503–230–5678; fax number 503–230–5699; e-mail drboorse@bpa.gov.

SUPPLEMENTARY INFORMATION: BPA's existing Shelton-Kitsap No. 2 115-kV transmission line is approximately 31 miles in length and is located in Mason and Kitsap Counties in Washington State. In addition to this 115-kV line, there are two existing 230-kV transmission lines in the corridor between BPA's Shelton Substation and its Kitsap Substation. To improve system capability and reliability, BPA is

proposing a joint project with Puget Sound Energy (PSE) to rebuild BPA's existing Shelton-Kitsap No. 2 115-kV line as a double-circuit 230-kV line in the existing right-of-way. One circuit would replace the existing 115-kV line and would initially be operated at 115-kV. The other circuit would be a new circuit operated at 230 kV.

The new 230-kV circuit would be routed around BPA's Kitsap Substation and would interconnect with PSE's existing Kitsap-South Bremerton No. 3 line. The Kitsap-South Bremerton No. 3 line (constructed for 230 kV but currently operating at 115 kV) would be re-energized at 230 kV and terminated at a new 230/115-kV transformer at the South Bremerton Substation.

Transmission planning studies have shown that if one of the two existing 230-kV transmission lines to the Kitsap Substation or one of the two existing 230/115-kV transformers at Kitsap is out of service, the remaining facilities serving electrical loads on the Kitsap Peninsula could experience thermal loading beyond their rated capabilities. Thermal overloading of transmission facilities could result in failure or damage of equipment as well as violation of National Electrical Safety Code standards. These outage conditions may also cause system voltages to drop below acceptable levels and eventually lead to voltage collapse resulting in loss of load. BPA needs to correct and improve these conditions on its Shelton-Kitsap 115-kV line.

Construction of the proposed line would cause short-term construction-related impacts to land use, socioeconomic, visual, soils, and vegetation resources. These would include noise, dust, traffic disruption, erosion, and possible growth of noxious weeds in the ROW from ground surface and vegetation disturbance during construction. Temporary increases in the use of local motels/hotels, recreational parks, and campgrounds by construction workers, and short-term increases in local employment and spending in the local economy, would also occur. Minor visual impacts may occur from construction activities in certain locations along the ROW. Potential increases in soil erosion due to access road improvements, pole assembly and erecting, and clearing to provide access to work areas would occur. However, in the long term, erosion rates are expected to return to pre-construction rates.

Long-term impacts would be the removal of approximately 0.5 acre of young forested woodland, with accompanying loss of shade on a small non-fish-bearing stream at the site near the south side of the BPA Kitsap Substation on BPA property. The tree removal is necessary to route the line around the Kitsap Substation and interconnect with PSE's existing Kitsap-South Bremerton No. 3 line. The amount of clearing would be relatively small, and low-growing vegetation would regrow in the cleared area.

No impacts are expected to wetlands and floodplains, public health and safety, and cultural resources. During review of the Preliminary EA, the Squaxin Island Tribe discussed with BPA the presence of areas of cultural sensitivity in the project vicinity. A Draft Memorandum of Agreement between BPA and the Tribe has been prepared to ensure protection of the culturally sensitive areas.

BPA also studied the No Action Alternative. The No Action Alternative would be to continue with the current Dispatcher Standing Operating Order, which defines actions to be taken under peak load normal system and outage conditions to mitigate potential overload and low voltage conditions. BPA currently has an agreement with the U.S. Navy, whereby BPA, in an emergency, and for a very short duration, could connect the Navy's backup generators to BPA's transmission system while the problem was being repaired. However, since the agreement was put into place the region's electrical load has grown such that, even with the generators, the electrical system is inadequate to supply the needed electricity. In addition, if the Navy needs the generators for their own emergency purposes, they may cease support to BPA at any time. BPA's agreement with the Navy to use its generators expires in 2001 and will not be extended for the long term. Outages will occur if BPA experiences problems on the system without the rebuild.

The Proposed Action would not violate Federal, State, or local law or requirements imposed for protection of the environment. All permits are in place.

Floodplain Statement of Findings

This is a Floodplain Statement of Findings prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain and Wetlands Involvement was published in the **Federal Register** on September 15, 2000, and a floodplain and wetlands assessment was incorporated in the EA (section 3.7). BPA is proposing to rebuild its existing Shelton-Kitsap No. 2 115-kV transmission line as a double-circuit 230-kV line in the existing right-of-way which crosses the 100-year floodplains of Johns Creek, Cranberry Creek, and Sherwood Creek. No impacts to the floodplains would occur because no construction activities within the floodplains would be associated with the proposed project, and their floodplain characteristics would not be altered. The proposed action conforms to applicable State or local floodplain protection standards.

BPA will endeavor to allow 15 days of public review after publication of this statement of findings before implementing the proposed action.

Determination

Based on the information in the EA, as summarized here, BPA determines that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, 42 U.S.C. 4321 *et seq.* Therefore, an EIS will not be prepared and BPA is issuing this FONSI.

Issued in Portland, Oregon, on January 17, 2001.

Robert W. Beraud,

Manager, Environmental Analysis.

[FR Doc. 01–2573 Filed 1–29–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–124–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

January 24, 2001.

Take notice that on January 16, 2001, Algonquin Gas Transmission Company (Algonquin) tendered its filing in compliance with the Commission's letter order in Docket No. RP01–124–000 [93 FERC 61,318 (2000)] issued on December 29, 2000 (December 29 Order).

Algonquin states that the purpose of this filing is to comply with the requirements of the December 29 Order to submit a revised, executed service agreement between Algonquin and US GEN New England, Inc. (USGen) for firm lateral service that conforms to the Rate Schedule AFT–CL form of service agreement contained in Algonquin's tariff and a statement detailing the rate and term of the prearranged capacity release to USGen under Rate Schedule AFT–CL.

Algonquin also states that copies of the filing were mailed to all parties to Docket No. RP01–124–000 and also all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such 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. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2554 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–211–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 24, 2001.

Take notice that on January 19, 2001, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the Sixth Revised Sheet No. 45E.01 to be effective March 1, 2001.

ANR states that the purpose of this filing is to designate in its tariff a new point eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

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, N.E., Washington, D.C. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2552 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–018]

Columbia Gulf Transmission Co.; Notice of Negotiated Rate Filing

January 24, 2001.

Take notice that on January 16, 2001, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

ITS–2 Service Agreement No. 70332 between Columbia Gulf Transmission Company and Transworld Explanation and Production, Inc., dated December 19, 2000.

Transportation service which is scheduled to commence upon Commission authorization.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2546 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–68–000]

Indiana Gas Company, Inc.; Notice of Application

January 24, 2001.

On January 19, 2001, Indiana Gas Company, Inc. (Indiana Gas), 1630 North Meridian Street, P.O. Box 44945, Indianapolis, Indiana 46244–0945, filed in Docket No. CP01–68–000 an application pursuant to Section 7(f) of the Natural Gas Act (NGA) to expand its service area determination in Jefferson and Oldham Counties, Kentucky to include an area two miles north and one-half mile south of the existing area, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Indiana Gas states that the expanded service area will give Indiana Gas the flexibility needed to purchase the right-of-way associated with a new 12.6-mile pipeline in the two counties to be used to provide reliable natural gas service to existing and future retail residential, commercial and industrial customers in the Greater Louisville Metropolitan Area, in particular Clark and Floyd Counties, Indiana. Indiana Gas indicates that, although the needed construction could occur within the existing right-of-way, such an approach would adversely affect landowners because of the significant residential development along the existing facilities subsequent to their construction in 1952.

In addition to the request to expand the Section 7(f) service area determination, Indiana Gas also requests (1) a finding that Indiana Gas qualifies as a local distribution company for purposes of Section 311 of the Natural Gas Policy Act of 1978 (NGPA), and (2)

a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the Natural Gas Act and the NGPA. Indiana Gas also requests that the Commission clarify that its service area determination also includes Jefferson County, Kentucky.

Questions regarding the details of this proposed project should be directed to John E. Fansher, Manager, Land Department, at (317) 301–0598, or in writing to his attention at the above address.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 14, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party 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 all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Non-party 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 court review of the Commission's final order.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2548 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–352–001]

Natural Gas Trading Corporation; Notice of Filing

January 16, 2001.

Take notice that on January 10, 2001, Natural Gas Trading Corporation (NGTC) petitions the Commission for acceptance of NGTC Rate Schedule FERC No, 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and the waiver of certain Commission Regulations.

NGTC intends to engage in wholesale electric power and energy purchases and sales as a marketer. NGTC is not in the business of generating or transmitting electric power.

Any person desiring to be heard or to protest such 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 and protests should be filed on or before January 31, 2001. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–2555 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–20–000]

Northwestern Wisconsin Electric Company; Notice of Filing

January 24, 2001.

Take notice that on January 22, 2001, Northwestern Wisconsin Electric Company (NWE), tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. Section 8245b, an amendment to its Application for approval to transfer operational control over certain identified transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). NWE states in the amendment that NWE's application to transfer operational control of the identified facilities to the Midwest ISO will not adversely affect competition, rates, regulation or generation.

NWE states the filing has been served on the Public Service Commission of Wisconsin; the Midwest ISO; Dairyland Power Cooperative; Xcel Energy; the Village of Centuria, Wisconsin; Ziegler Incorporated; Utilities Plus; and Polk-Burnett Electric Cooperative.

Any person desiring to be heard or to protest such 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 and protests should be filed on or before February 2, 2001. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2549 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–182–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

January 24, 2001.

Take notice that on January 16, 2001, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective on January 7, 2001:

Second Sub First Revised Sheet No. 456A
Sub First Revised Sheet No. 456B

Texas Eastern states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated January 5, 2001, in Docket Nos. RP01–182–000 and RP01–182–001 (January 5 Order).

Texas Eastern states that on December 7, 2000, revised tariff sheets were filed in this docket in order to make the benefits and opportunities of e-commerce available to Texas Eastern's existing and potential customers. The proposed tariff modifications permit customers to request service agreements electronically and to execute such contracts on-line via the LINKr System, as well as to expedite the net present value contract request and contract execution processes.

Texas Eastern states that the January 5 Order accepted Texas Eastern's December 7 tariff filing, effective January 7, 2001, subject to the condition that Texas Eastern file, within ten days of the January 5 Order, revised tariff sheets to (i) maintain its tariff provision awarding capacity on a pro rata basis and (ii) continue to allow a shipper to withdraw a request for service prior to the close of the open season.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2551 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–194–001]

Viking Gas Transportation Company; Notice of Compliance Filing

January 24, 2001.

Take notice that on January 18, 2001, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Tariff Sheet No. 144, with an effective date of January 1, 2001.

Viking states that the filing is being made in compliance with the Commission's January 11, 2001 Letter Order issued in Docket No RP01–194–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2550 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–269–003 and RP99–249–002]

Williston Basin Interstate Pipeline Co.; Notice of Compliance Filing and Refund Report

January 24, 2001.

Take notice that on January 19, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff and a Refund Report in compliance with the Commission's Orders issued October 21, 1998 and December 17, 1997, which were upheld by the United States Court of Appeals for the Eighth Circuit in an opinion issued June 27, 2000 in Case Nos. 98–4079 and 99–3554.

Williston Basin states that it has revised its Rate Schedule X–13 rate to reflect the final return on equity reflected in the Commission's Order issued November 21, 2000 in Docket Nos. RP95–364–000, et al.

Williston Basin also states that on January 29, 2001, a refund of the amount owed should be received by Northern States Power Company for the locked in period March 1, 1997 through December 31, 2000 with interest through January 19, 2001, in accordance with Section 154.501 of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 31, 2001. 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. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2545 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER994235–003, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 23, 2001.

Take notice that the following filings have been made with the Commission:

1. New York Independent System Operator, Inc.

[Docket Nos. ER99–4235–003; ER00–798–003; ER01–461–001]

Take notice that on January 18, 2001, the New York Independent System Operator, Inc. (NYISO), tendered for filing a complete version of FERC Electric Tariff Original Volume No. 2, the Market Administration and Control Area Services Tariff, in order to comply with Commission Order No. 614, on the designation of electric rate schedules, and the Commission's December 18, 2000 Letter Order in the above-captioned dockets. The NYISO also files revisions to update its FERC Electric Tariff Original Volume No. 1, the Open Access Transmission Tariff, pursuant to the same letter order. The filings effect no substantive changes to the tariff.

The NYISO has requested an effective date of January 2, 2001 for the filing, and has requested waiver of the Commission's notice requirements.

The NYISO has requested waiver of the Commission's service requirements. The documents are available for download from the NYISO's website at www.nyiso.com. Copies will be provided upon request.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Energy Lee, LLC

[Docket No. ER01–545–001]

Take notice that on January 17, 2001, Duke Energy Lee, LLC (Duke Lee), tendered for filing its FERC Electric Tariff, Original Volume No. 1 (Tariff) with conforming rate designations in accordance with the letter order issued in the above-captioned docket on January 5, 2001 (Letter Order). In accordance with the Letter Order, only the Tariff's rate designations were modified in order to conform to Order No. 614, and no other changes were made.

Comment date: February 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Energy McClain, LLC

[Docket No. ER01–566–001]

Take notice that on January 17, 2001, Duke Energy McClain, LLC (Duke McClain), tendered for filing its FERC Electric Tariff, Original Volume No. 1 (Tariff) with conforming rate designations in accordance with the letter order issued in the above-captioned docket on January 3, 2001 (Letter Order). In accordance with the Letter Order, only the Tariff's rate designations were modified in order to conform to Order No. 614, and no other changes were made.

Comment date: February 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy Hinds, LLC

[Docket No. ER01–691–001]

Take notice that on January 17, 2001, Duke Energy Hinds, LLC (Duke Hinds), tendered for filing its FERC Electric Tariff, Original Volume No. 1 (Tariff) with conforming rate designations in accordance with the letter order issued in the above-captioned docket on January 9, 2001 (Letter Order). In accordance with the Letter Order, only the Tariff's rate designations were modified in order to conform to Order No. 614, and no other changes were made.

Comment date: February 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Indianapolis Power & Light Co.

[Docket No. ER01–718–001]

Take notice that on January 17, 2001, Indianapolis Power & Light Company (IPL), tendered for filing an amendment of the First Amendment to the Interconnection, Operation and Maintenance Agreement with DTE Georgetown, L.L.C., filed with the Commission on December 18, 2000 filing in the above-referenced docket.

Copies of the amended filing were served on the Indiana Utility Regulatory Commission and DTE Georgetown, L.L.C.

Comment date: February 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corp. on behalf of Allegheny Energy Supply Co., LLC

[Docket No. ER01–986–000]

Take notice that on January 18, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 109 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of January 1, 2001 for service to the Borough of Park Ridge.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. American Transmission Systems, Inc.; Ohio Edison Co.; The Cleveland Electric Illuminating Co.; The Toledo Edison Co.

[Docket No. ER01–987–000]

Take notice that on January 18, 2001, American Transmission Systems, Inc., tendered for filing on behalf of itself and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Service Agreements for Network Integration Service and Operating Agreements for the Network Integration Transmission Service under the Ohio Retail Electric Program with Nicor Energy, L.L.C. and AES NewEnergy, Inc., pursuant to the American Transmission Systems, Inc. Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Ohio Retail Electric Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is January 1, 2001.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, LLC

[Docket No. ER01–988–000]

Take notice that on January 18, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to Part

IV of the PJM Open Access Transmission Tariff to amend its generation interconnection study procedures to specify that feasibility and impact studies will be conducted on a bi-annual basis.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

PJM requests a waiver of the Commission's 60-day notification requirement to permit an effective date of January 31, 2001.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Green Mountain Power Corp.

[Docket No. ER01–989–000]

Take notice that on January 18, 2001, Green Mountain Power Corporation (GMP), tendered for filing its proposed FERC Electric Tariff, Original Volume No. 4, a market-based rate power sales tariff that includes a form of umbrella service agreement and code of conduct.

GMP requests waiver of the Commission's notice of filing requirements in order to allow the proposed market-based rate tariff to become effective on January 19, 2001.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corp.

[Docket No. ER01–991–000]

Take notice that on January 18, 2001, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 37 to the ISO Tariff. The ISO states that Amendment No. 37 is intended to modify the bidding requirements for Reliability Must-Run (RMR) Unit Owners whose Units are dispatched by the ISO prior to the close of the PX Markets who chose be paid under the terms of the RMR Contract rather than through the market. Such an Owner would be exempted from the requirement that the RMR Contract Energy be bid into the PX Day-Ahead Market if it is prohibited from bidding into that market by law or regulation or because it disqualified under the terms of the PX Tariff.

The ISO requests waiver of the Commission's notice requirements and an effective date of January 18, 2001.

The ISO states that this filing has been served on the California Public Utilities Commission, the California Electricity Oversight Board, all parties to Must Run Service Agreements and all California ISO Scheduling Coordinators.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Energy Chalk Point, LLC

[Docket No. ER01–992–000]

Take notice that on January 18, 2001, Southern Energy Chalk Point, LLC (SE Chalk Point), tendered for filing with the Federal Energy Regulatory Commission a short-term Master Power Purchase and Sale Agreement dated December 18, 2000, between Southern Company Energy Marketing, L.P. and SE Chalk Point for sales under SE Chalk Point's Market Rate Tariff, which was accepted for filing in Document No. ER00–3760–000.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. MEP Pleasant Hill, LLC

[Docket No. ER01–993–000]

Take notice that on January 18, 2001, MEP Pleasant Hill, LLC (MEPPH), tendered for filing Service Agreement No. 2 under its FERC Electric Tariff, Volume No. 1, providing for sales of electric energy to Missouri Public Service.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Tampa Electric Co.

[Docket No. ER01–994–000]

Take notice that on January 18, 2001, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Duke Energy Trading and Marketing, L.L.C. (Duke Energy), under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on December 22, 2000.

Copies of the filing have been served on Duke Energy and the Florida Public Service Commission.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Co.

[Docket No. ER01–995–000]

Take notice that on January 18, 2001, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Oglethorpe Power Corporation (Oglethorpe) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on December 20, 2000.

Copies of the filing have been served on Oglethorpe and the Florida Public Service Commission.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Co.

[Docket No. ER01–996–000]

Take notice that on January 18, 2001, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Coral Power L.L.C. (Coral), under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on December 22, 2000, and gives notice of its termination as of February 1, 2001.

Copies of the filing have been served on Coral and the Florida Public Service Commission.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Energy Corp.

[Docket No. ER01–997–000]

Take notice that on January 18, 2001, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Engage Energy America LLC, for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 9, 2001.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corp.

[Docket No. ER01–998–000]

Take notice that on January 18, 2001, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Engage Energy America LLC for Firm Point-to-Point Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on January 9, 2001.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Energy Corp.

[Docket No. ER01–999–000]

Take notice that on January 18, 2001, Duke Energy Corporation (Duke),

tendered for filing a Service Agreement with PECO Energy Company for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on December 19, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. PJM Interconnection, LLC

[Docket No. ER01–1000–000]

Take notice that on January 18, 2001, PJM Interconnection, LLC (PJM), tendered for filing an executed interconnection service agreement between PJM and NRG Energy Center Dover LLC.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon NRG Energy Center Dover LLC and the state electric utility regulatory commissions within the PJM control area.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Energy Potomac River, LLC

[Docket No. ER01–1001–000]

Take notice that on January 18, 2001, Southern Energy Potomac River, LLC (SE Potomac River), tendered for filing with the Federal Energy Regulatory Commission a short-term Master Power Purchase and Sale Agreement dated December 18, 2000, between Southern Company Energy Marketing, L.P. and SE Potomac River for sales under SE Potomac River's Market Rate Tariff, which was accepted for filing in Document No. ER00–3760–000.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Energy Peaker, LLC

[Docket No. ER01–1002–000]

Take notice that on January 18, 2001, Southern Energy Peaker, LLC (SE Peaker), tendered for filing with the Federal Energy Regulatory Commission a short-term Master Power Purchase and Sale Agreement dated December 18, 2000, between Southern Company Energy Marketing, L.P. and SE Peaker sales under SE Peaker's Market Rate Tariff, which was accepted for filing in Document No. ER00–3760–000.

Comment date: February 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Dominion Energy, Inc.; Dominion Cogen NY, Inc.; State Dam Corp.; State Dam II, LLC; Sissonville Corp.; Sissonville II, LLC

[Docket No. EC01–58–000]

Take notice that on January 17, 2001, Dominion Energy, Inc., and Dominion Cogen NY, Inc. (collectively Sellers), and State Dam Corporation, State Dam II, LLC, Sissonville Corporation and Sissonville II, LLC (Purchasers) filed with the Federal Energy Regulatory Commission (Commission) a joint application (Application) pursuant to Section 203 of the Federal Power Act for authorization of both the disposition and acquisition of jurisdictional facilities whereby Sellers will sell for cash their one-half limited and general partnership interests in NYSD Limited Partnership (NYSD) and Sissonville Limited Partnership (Sissonville) to the Purchasers. The Purchasers and Sellers have requested confidential treatment of the Forms of Partnership Interest Purchase Agreement included as an exhibit to the Application pursuant to Section 388.112 of the Commission's regulations. NYSD and Sissonville are exempt wholesale generators that own hydroelectric generating projects, interconnection facilities and Commission jurisdictional contracts. The NYSD facility is a 10.83 MW facility located on the Mohawk River near the Town of Waterford and City of Cohoes in Saratoga and Albany Counties, New York. The Sissonville facility is a 2.3 MW facility located on the Raquette River in the Town of Potsdam, St. Lawrence County, New York.

Comment date: February 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Bangor Hydro-Electric Co.; Central Maine Power Co.; National Grid USA; Northeast Utilities Service Co.; The United Illuminating Co.; Vermont Electric Power Co.; ISO New England Inc.

[Docket No. RT01–86–000]

Take notice that on January 16, 2001, pursuant to Order Nos. 2000 and 2000–A and the Commission's regulations thereunder, Bangor Hydro-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company and ISO New England Inc., collectively, Petitioners, filed a Joint Petition for Declaratory Order to form the New England Regional Transmission Organization.

Comment date: February 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. New York Independent System Operator, Inc.; Central Hudson Gas & Electric Corp.; Consolidated Edison Company of New York, Inc.; Niagara Mohawk Power Corp.; New York State Electric & Gas Corp.; Orange & Rockland Utilities, Inc.; Rochester Gas and Electric Corp.

[Docket No. RT01–95–000]

Take notice that on January 16, 2001, pursuant to Section 35.34(h) of the Commission's regulations, and the Commission's July 20, 2000 ''Notice of Guidance for Processing Order No. 2000 Filings'' in Docket No. RM99–2–000, the New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation, jointly submitted an Order No. 2000 compliance filing.

Comment date: February 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. RTO Informational Filings

[Docket No. RT01–1–000]

Take notice that on January 16, 2001, the following listed entities tendered for filing voluntary informational filings in response to the Commission's Order No. 2000.[1]

Ontario Independent Electricity Market Operator; Massachusetts Municipal Wholesale Electric Co. (Connecticut Municipal Electric Energy Cooperative, Vermont Public Power Supply Authority, Braintree Electric Light Department, Chicopee Municipal Lighting Plant, New Hampshire Electric Cooperative, Inc., Reading Municipal Light Department, South Hadley Electric Light Department, Taunton Municipal Lighting Plant, and Westfield Gas & Electric Light Department); NB Power Corp. (Nova Scotia Power Inc., Maritime Electric Company, Limited, Maine Electric Power Co., and Maine Public Service Co.).

[1] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000).

27. Maine Electric Power Co.; San Diego Gas & Electric Co.; Pacific Gas and Electric Co.; California Independent System Operator Corp.; Citizens Communications Co.; Fitchburg Gas and Electric Light Co.; Concord Electric Co. and Exeter & Hampton Electric Light Co.; Southern California Edison Co.; California Power Exchange Corp.; NSTAR Services Co.; Central Vermont Public Service Corp.

[Docket Nos. RT01–19–000; RT01–82–000; RT01–83–000; RT01–85–000; RT01–89–000; RT01–90–000; RT01–92–000; RT01–93–000; RT01–94–000; RT01–97–000]

Citizens Communications Co.; Green Mountain Power Corp., and Vermont Electric and Power Co.

[Not consolidated]

Take notice that on January 16, 2001, the entities listed in the caption above made compliance filings pursuant to 18 CFR 35.34(c) and the Commission's Order No. 2000.[2]

Comment date: February 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such 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 should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–2544 Filed 1–29–01; 8:45 am]

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[2] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–65–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 2001 System Expansion and Capacity Stabilization Project and Request for Comments on Environmental Issues

January 24, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 2001 System Expansion and Capacity Stabilization Project involving construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Chester County, Pennsylvania and Cecil County, Maryland.[1] Eastern Shore would construct 6 miles of 16-inch-diameter pipeline loop, install two 1,665 horsepower (hp) compressor units at its Daleville Compressor Station, and construct a new delivery point/meter station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need to Know?'' was attached to the project notice Eastern Shore provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Internet website (*www.ferc.fed.us).*

[1] Eastern Shore's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

Eastern Shore wants to expand the capacity of its facilities in Pennsylvania and Maryland to provide an additional 19,800 decatherms per day of firm capacity service for three local distribution companies. Eastern Shore seeks authority to construct and operate:

- 6 miles of 16-inch-diameter pipeline loop adjacent to an existing pipeline on its existing right-of-way in Chester County, Pennsylvania and Cecil County, Maryland;
- Two additional 1,665 hp compressor units at its Daleville Compressor Station in Chester County, Pennsylvania; and
- A new delivery point on Eastern Shore's existing mainline in Chester County, Pennsylvania.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

The proposed project follows the existing Eastern Shore right-of-way (ROW) for 5.3 miles of the 6-mile project. Construction of the proposed facilities would affect about 55.4 acres of land. About 22.7 acres of existing permanent easement and 28.7 acres of temporary construction ROW would be necessary for pipeline construction. New compressor station facilities would require an additional 3.9 acres at the existing site. Construction of the meter station would require about 0.1 acre.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Cultural resources
- Public safety
- Land use
- Endangered and threatened species
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- Impacts to residents within 540 feet of construction, and impacts to agricultural areas.
- Effects from the addition of 3,330 hp of compression.
- Effects to wetlands, forested areas, and possible impacts to Federal and state-listed species.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow these instructions carefully to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group, 1, PJ–11.1.
- Reference Docket No. CP01–65–000.
- Mail you comments so that they will be received in Washington, DC on or before March 2, 2001.

Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001)a(1)(iii) and the instructions on the Commission's website at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User's Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (*www.ferc.fed.us*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2553 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2001.

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.:* 2543–047.

c. *Date Filed:* December 22, 2000.

d. *Applicants:* The Montana Power Company and The Montana Power, L.L.C.

e. *Name of Project:* Milltown.

f. *Location:* On the Clark Ford River in Missoula County, Montana. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 497–2456; Steven M. Kramer and Carla J. Urquhart, Milbank, Tweed, Hadley & McCloy LLP, 1825 I Street, NW, Suite 1100, Washington, DC 20006, (202) 835–7508.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments and or motions:* March 1, 2001.

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. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the Project Number (2543–047) on any comments or motions filed.

k. *Description of Transfer:* Transfer of the license for the project is being sought in connection with The Montana Power Company's (Montana Power) conversion to a limited liability company, The Montana Power, L.L.C., as part of an internal corporate restructuring that will be undertaken prior to the sale of Montana Power's utility business to North Western Corporation (North Western). The latter transaction is the subject of a separate proceeding in which Montana Power and North Western have filed a joint application under Section 203 of the Federal Power Act seeking approval of the disposition of jurisdictional facilities in connection with the sale of Montana Power's utility business.

The transfer application was filed within five years of the expiration of the license for the project. A Commission Order issued June 16, 2000, extended the termination date of the license to December 31, 2006. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30854 at p. 31437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31438 n. 318).

l. *Location 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. This filing may be viewed on *http://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 party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–2547 Filed 1–29–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6939–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Requirements Under EPA's National Wastewater Operator Training and Technical Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Wastewater Operator Training and Technical Assistance Program, EPA ICR Number 1977.01, and *OMB Control Number to be assigned.* Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 2, 2001.

ADDRESSES: Environmental Protection Agency, Office of Wastewater Management, National Wastewater Operator Training and Technical Assistance Program—104(g)(1) ICR Docket, Municipal Assistance Branch (Mail Code 4204–M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Interested persons may obtain a copy of the ICR and supporting analysis without charge by contacting the individual listed below.

FOR FURTHER INFORMATION CONTACT: Curt Baranowski, Telephone: 202–564–0636. Facsimile Number: (202) 501–2396. E-mail: *baranowski.curt@epa.gov.*

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are state and local governments, state and county colleges, and those organizations which provide training assistance through the Clean Water Act 104(g)(1) Program to municipal wastewater treatment plants. Title: National Wastewater Operator Training and Technical Assistance Program. (*OMB Control No. to be assigned.* EPA ICR No.: 1977.01.

Comments

Comments should be submitted to the National Wastewater Operator Training and Technical Assistance Program ICR Comment Clerk, Mail Code 4204–M, Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Those who comment and want EPA to acknowledge receipt of their comments should enclose a self addressed stamped envelope. Comments may also be submitted electronically to *baranowski.curt@epa.gov.* Electronic comments should be submitted as an ASCII file avoiding the use of special characters and forms of encryption, and be identified by the use of words ''OTP ICR Comments''. No confidential business information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disk in Corel WordPerfect 8 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for this proposed ICR renewal has been established in the Office of Wastewater Management, Municipal Assistance Branch and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at the

United States Environmental Protection Agency, Municipal Assistance Branch, 7th Floor, ICC Building, 1201 Constitution Avenue, NW, Washington, DC 20004. For access to the docket materials, please call (202) 564–0753 to schedule an appointment.

Abstract

The Wastewater Operator Training Program provides on-site technical assistance to municipal wastewater treatment plants. Information will be collected from the network of forty-eight 104(g)(1) training centers set up through out the United States. The information will be collected to identify the facilities assisted, the different types of assistance the program provides and the environmental outcomes and benefits of the assistance provided by the program. The information will be collected and submitted on either an annual or semi-annual basis. A Microsoft Access and a Lotus 1–2–3 database have been developed for this purpose. This ICR will be used by EPA for the technical and financial management of the 104(g)(1) Program. It is strongly suggested that the 104(g)(1) Program training centers participate in the information collection although it is not mandatory. All information in the data system will be made public upon request. 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 are listed in the Code of Federal Regulations Title 40 part 9 and in the Code of Federal Regulations Title 48 Chapter 15.

The EPA would like to solicit 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement

The projected combined annual burden hours of this ICR to all respondents will be approximately 512 hours. The average annual burden hours to each 104(g)(1) training center grantee will be 7 hours, for a total of 336 hours per year. The average annual burden hours to the EPA's Regional Offices and Headquarters will be 16 hours each, for a total of 176 burden hours per year.

Data will be collected on an annual basis, in May of each year, for the Microsoft Access database collection, and data for the Lotus 1–2–3 spreadsheet information collection will be done on a bi-annual basis, in May and November of each year. Although this information collection is not mandatory, it is expected that 100% of the 104(g) training centers will respond to this collection request. All forty-eight (48) training centers and EPA have the necessary equipment, desk-top computers and Microsoft Access, to collect and manage this information. There will be no additional start-up or maintenance costs associate with this project to perform this information collection request. 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.

Dated: January 24, 2001.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 01–2566 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6940–2]

RIN 2060–AI52

National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List and Schedule for Standards Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the list of categories of major and area sources.

SUMMARY: This notice publishes revisions to the list of categories of major and area sources for sources of hazardous air pollutants (HAP). Required under section 112(c) and (e) of the Clean Air Act (CAA), the source category list and schedule for standards constitute a significant part of EPA's agenda for regulating stationary sources of air toxics emissions. The list and schedule were most recently published in the **Federal Register** on November 18, 1999 (64 FR 63025).

Today's notice meets the requirement in section 112(c)(1) to publish periodically, but at least once every 8 years, a list of all categories of sources reflecting revisions since the initial list was published. Several of the revisions identified in today's notice have previously been published in actions associated with proposing and promulgating emission standards for individual source categories, and public comment has been taken in the context of those actions. Some of the revisions in today's notice have not been reflected in any previous notices and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be without need for public comment based on the nature of the actions.

EFFECTIVE DATE: January 30, 2001.

ADDRESSES: Docket No. A–90–49, containing supporting information used in development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located in EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Yvonne W. Johnson, Emission Standards Division (MD–13), U.S. EPA, Office of Air Quality Planning and

Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2798, facsimile number (919) 541–0072, electronic mail address johnson.yvonnew@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket for this action is A–90–49. The docket is an organized file of all the information submitted to or otherwise relied upon by the Agency in the development of this revised list of source categories and revised schedule for standards. The principal purpose of the docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's revision to the initial list and schedule. The docket is available for public inspection at EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. What is the History of the Source Category List and Schedule?

The CAA requires, under section 112, that EPA list all categories of major sources emitting HAP and such categories of area sources warranting regulation, and promulgate national emission standards for hazardous air pollutants (NESHAP) to control, reduce, or otherwise limit the emissions of HAP from such categories of major and area sources. Pursuant to the various specific listing requirements in section 112(c), on July 16, 1992 (57 FR 31576), we published a list of 174 categories of major and area sources—referred to as the initial list—for which we would develop emission standards. On December 3, 1993 (58 FR 63941), pursuant to requirements in section 112(e), we published a schedule for the promulgation of emission standards for each of the 174 listed source categories.

When we publish notices that affect actions relating to individual source categories, it is important to reflect the resultant changes on the list and schedule. On June 4, 1996 (61 FR 28197), we published a notice that referenced all previous list and schedule changes and consolidated those actions, along with several new actions, into a revised source category list and schedule. Subsequently, we published three additional notices which updated the list and schedule: February 12, 1998 (63 FR 7155); May 17, 1999 (64 FR 26743); and November 18, 1999 (64 FR 63025). You should read these previous notices for information relating to the development of the initial list and schedule and subsequent changes.

II. Why is EPA Issuing This Notice?

This notice announces all list and schedule changes that have occurred since we last updated the list on November 18, 1999 (64 FR 63025). The changes and the affected source categories, are:

Changes to Source Category Names
- Leather Tanning and Finishing Operations
- Solvent Extraction for Vegetable Oil Production
- Petroleum Refineries—Catalytic Cracking, Catalytic Reforming Units, and Sulfur Recovery Units
- Municipal Solid Waste Landfills
- Publicly Owned Treatment Works (POTW)

Addition of Categories of Area Sources
- Hazardous Waste Incineration
- Portland Cement Manufacturing
- Secondary Aluminum Production

Deletion of Source Categories
- Alumina Processing
- Petroleum Dry Cleaners
- Coke By-Product Plants.

The source category list and promulgation schedule, updated to include today's actions as well as actions from previous notices, are presented in Table 1. Table 1 also includes **Federal Register** citations for notices related to the source categories (Table 1 omits proposal notices once a rule or rule amendment has been promulgated). Source categories for which revisions have been made in today's notice are annotated in Table 1 for ease in discerning where revisions have been made.

For general descriptions of source categories listed in Table 1, the reader is referred to ''Documentation for Developing the Initial Source Category List'' (EPA–450/3–91–030) and the **Federal Register** notice for the first revision of the source category list and schedule (61 FR 28197, June 4, 1996). For subsequent changes to descriptions of source categories for which a rule has been promulgated, the reader is advised to consult Table 1 for the citation of the **Federal Register** notice that includes the amended definition and corresponding rule applicability.

III. What Are the Revisions EPA Is Making to the Source Category List and Schedule?

The following sections describe revisions to the source category list since the November 18, 1999.

A. Changes to Source Category Names

We are renaming the following source categories so that the names better describe the source category:

1. ''Leather Production'' is renamed ''Leather Tanning and Finishing Operations.''
2. ''Vegetable Oil Production'' is renamed ''Solvent Extraction for Vegetable Oil Production.''
3. ''Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units'' is renamed to ''Petroleum Refineries—Catalytic Cracking, Catalytic Reforming Units, and Sulfur Recovery Units.''
4. ''Municipal Landfills'' is renamed to ''Municipal Solid Waste Landfills.''
5. ''Publicly Owned Treatment Works (POTW) Emissions'' is renamed to ''Publicly Owned Treatment Works (POTW).''

B. Addition of Categories of Area Sources

The various authorities for listing and regulating area source categories under section 112 are all discretionary and/or require some sort of finding or determination by the Administrator. In the promulgated regulatory actions for hazardous waste incineration, portland cement production, and secondary aluminum production, we stated that major, as well as, affected area sources would be regulated. Today's notice merely reflects the addition of these three source categories as area sources on Table 1.

C. Deletion of Source Categories

The Administrator may, where appropriate, delete categories of sources on the Administrator's own motion or on petition. In today's notice, we are deleting three source categories—alumina processing, petroleum dry cleaners, and coke by-product plants—on the Administrator's own motion. As discussed in the initial list notice (57 FR 31576), we included these categories on the list because at the time, we believed there were major sources in each category, either because they were major sources in their own right or because of collocation with other sources of HAP. Two of these source categories are being deleted because available data indicate that there are no major sources in any of the source categories; the third source category is being deleted because it is already subject to an existing rule.

1. Alumina Processing

The Alumina Processing source category was initially listed in July 1992 based on combustion emission factors for calciners which indicated that hexane and formaldehyde emissions were large enough for some sources to be major. Information collected since the listing indicates that there are four facilities producing alumina in the United States. All of the facilities use the Bayer process to produce alumina, and none of the facilities are major sources of HAP. Emissions data on the facility that produces the most alumina indicate that it uses natural gas as fuel in its calciners, as do two of the other facilities that produce smaller amounts of alumina. The remaining facility uses fuel oil in its calciners and produces about one third the amount of alumina produced by the largest producer and operates only two calciners.

There is no speciation of organic compounds that are emitted from the natural gas boilers or calciners for these facilities, but the data indicate that about 7.5 tons per year of volatile organic compounds (VOC) are emitted from these combustion sources at the largest producing facility. Based on emission factors for combustion sources from the Compilation of Air Pollutant Emission Factors Vol I: Stationary Point and Area Sources (AP–42) (5th Edition), less than 10% of the VOC emitted from natural gas boilers are HAP. Therefore, less than one ton per year of HAP is estimated to be emitted from these combustion sources at the largest facility. Based on the above information, we conclude that the largest facility is not major, and since all of the facilities use the same process, we also conclude that the remaining three facilities are also not major.

2. Dry Cleaning (Petroleum Solvent)

The Dry Cleaning (Petroleum Solvent) source category was initially listed in July 1992 based on engineering calculations which indicated that at least one facility emitted HAP in excess of major source levels. The calculations were based on total facility volatile organic compounds (VOC) emissions information and a 1988 VOC speciation profile for petroleum dry cleaning solvents (i.e., mineral spirit/petroleum naphtha). The HAP identified in the solvent profile included: chlorobenzene, cumene, ethylbenzene, polycyclic organic compounds (POM), toluene, and xylene.

In 1998, we began gathering information to support the maximum achievable control technology (MACT) standards for petroleum solvent dry cleaners. These efforts were focused on obtaining current process and emissions information because information used to support the initial source category listing was more than 10 years old. One task included development of a HAP speciation profile for petroleum solvents currently available to dry cleaners. That information was obtained from leading manufacturers of petroleum dry cleaning solvents. The current HAP content of typical petroleum dry cleaning solvents (0.5 percent by weight) is an order of magnitude or more lower than what was reported in the 1988 speciation profile.

Emissions of HAP petroleum solvent dry cleaners were then conservatively estimated with the revised solvent speciation profile, from the Compilation of Air Pollutant Emission Factors Vol I: Stationary Point and Area Sources (AP–42) (5th Edition) for uncontrolled sources, and typical quantities of clothes cleaned annually by large industrial (SIC 7218) launderers and smaller commercial (SIC 7216) launderers. Our best estimate for a typical, uncontrolled industrial launderer is approximately 0.8 tpy of total HAP (or 0.6 tpy of a single HAP). Estimates for commercial launderers is approximately 0.03 tpy of total HAP (or 0.2 tpy of a single HAP). Based on the above information, it is our conclusion that no petroleum solvent dry cleaning operations emit HAP approaching major source levels.

3. Coke By-Product Plants

The Coke By-Product Plants source category was initially listed in July 1992. The decision to list was based on the fact that coke oven facilities including by-product recovery plants are major sources of HAP. Coke by-product recovery plants are designed and operated for the separation and recovery of coal tar derivatives (by-products) that evolve from coal during the coking process of a coke oven battery. The predominant HAP emitted from coke by-product recovery plants is benzene. Other HAP emitted include naphthalene, phenol, toluene, and xylene. Coke by-product recovery plants are subject to an existing standard (40 CFR part 61, subpart L, National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants) which was promulgated on September 14, 1980 and amended on September 19, 1991. That standard limits HAP emissions through equipment and work practice standards. Owners/operators are required to enclose and seal all openings on process vessels, tar storage tanks, and tar-intercepting sumps and to duct gases from these sources to a gas collection system for treatment. Since Coke By-Product Plants is a previously regulated source category, section 112(c)(4) of the CAA gives us the discretion to list or not list such source categories.

Since publishing the initial source category list, we have conducted a study to examine the effectiveness of the existing NESHAP for coke by-product recovery plants and concluded that further regulation of this source category is unnecessary. Although the existing standard was developed to control benzene, the standard effectively controls all other emitted HAP. The benzene standard, applicable to all coke by-product recovery plants in the listed source category, would determine the floor for any section 112(d) standard, and furthermore, we know of no realistic ''beyond the floor'' options at this time.

In summary, further rulemaking would result in no accompanying benefits. Any new standard that we would develop under section 112(d) would be based on and be comparable to the existing standard both in terms of application and level of stringency.

IV. Is This Action Subject to Judicial Review?

Section 112(e)(3) of the CAA states that the determination of priorities for promulgation of standards for the listed source categories is not a rulemaking and is not subject to judicial review, except that failure to promulgate any standard pursuant to the schedule established under section 112(e) shall be subject to review under section 304 of the CAA. Section 112(e)(4) states that, notwithstanding section 307 of the CAA, no action of the Administrator listing a source category or subcategory under section 112(c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category. Therefore, today's notice is not subject to judicial review.

V. Is EPA Asking for Public Comment?

Prior to issuance of the initial source category list, we published a draft initial list for public comment (56 FR 28548, June 21, 1991). Although we were not required to take public comment on the initial source category list, we believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, we solicit public comments on actions we are contemplating. Section 112(e)(3) requires that we offer

opportunity for public comments on the initial source category schedule, which we published as a draft in a September 24, 1992 notice and subsequently published in final form on December 3, 1993. We have decided, however, that it is unnecessary to solicit additional public comment on the revisions reflected in today's notice. Where we believe it is useful to solicit input on certain actions, we will offer interested parties an opportunity to provide comments on proposed individual emission standards.

VI. Administrative Requirements

Today's notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be ''significant'' is subject to the 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 lead to a rule that may either (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has determined that this action is not significant under the terms of Executive Order 12866.

Dated: January 19, 2001.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP

[Revision date: January 30, 2001]

Industry group source category [a]	Statutory promulgation date/Federal Register citation [b]
Fuel Combustion:	
Combustion Turbines	11/15/2000.
Engine Test Facilities	11/15/2000.
Industrial Boilers	11/15/2000.
Institutional/Commercial Boilers	11/15/2000.
Process Heaters	11/15/2000.
Reciprocating Internal Combustion Engines	11/15/2000.
Rocket Testing Facilities	11/15/2000.
Stationary Internal Combustion Engines	Renamed, 64FR63025.
Stationary Turbines	Renamed, 64FR63025.
Non-Ferrous Metals Processing:	
Lead Acid Battery Manufacturing	Deleted, 61FR28197.
Primary Aluminum Production	11/15/1997, 62FR52383(F).
Primary Copper Smelting	11/15/2000, 63FR19582(P), 63FR39326(SP).
Primary Lead Smelting	11/15/1997, 64FR30194(F).
Primary Magnesium Refining	11/15/2000.
Secondary Aluminum Production	11/15/1997, 65FR15689(F), 63FR55491(S), 63FR55489(ap).
Secondary Lead Smelting	11/15/1994, 60FR32587(F), 61FR27785(A), 61FR65334(A), 62FR32209(A), 63FR45007(A), 64FR4570(A), 64FR69637(A).
Ferrous Metals Processing:	
Coke By-Product Plants	11/15/2000, Deleted as of today.
Coke Ovens: Charging, Top Side, and Door Leaks	12/31/1992, 58FR57898(F), 59FR01922(C).
Coke Ovens: Pushing, Quenching, and Battery Stacks	11/15/2000.
Ferroalloys Production	Renamed, 64FR63025.
Ferroalloys Production: Silicomanganese and Ferromanganese	11/15/1997, 64FR27450(F).
Integrated Iron and Steel Manufacturing	11/15/2000.
Iron Foundries	11/15/2000.
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted, 61FR28197.
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted, 61FR28197.
Steel Foundries	11/15/2000.
Steel Pickling—HCl Process	Renamed, 64FR63025.
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants	11/15/1997, 64FR33202(F).
Mineral Products Processing:	
Alumina Processing	11/15/2000, Deleted as of today.
Asphalt Concrete Manufacturing	11/15/2000.
Asphalt Processing	11/15/2000.
Asphalt Roofing Manufacturing	11/15/2000.
Asphalt/Coal Tar Application—Metal Pipes Chromium Refractories Production	Renamed, 11/15/2000 64FR63025.
Clay Products Manufacturing	11/15/2000.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: January 30, 2001]

Industry group source category [a]	Statutory promulgation date/Federal Register citation [b]
Lime Manufacturing	11/15/2000.
Mineral Wool Production	11/15/1997, 64FR29490(F).
Portland Cement Manufacturing	11/15/1997, 64FR31897(F).
Refractories Manufacturing	11/15/2000.
Taconite Iron Ore Processing	11/15/2000.
Wool Fiberglass Manufacturing	11/15/1997, 64FR31695(F).
Petroleum and Natural Gas Production and Refining:	
Oil and Natural Gas Production	11/15/1997, 64FR32610(F).
Natural Gas Transmission and Storage	11/15/2000, 64FR32610(F).
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units.	11/15/1997, Renamed as of Today.
Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.	11/15/1997, 63FR78890(P).
Petroleum Refineries—Other Sources Not Distinctly Listed	11/15/1994, 60FR43244(F), 61FR07051(C) 61FR29876(C), 62FR07937(A).
Liquids Distribution:	
Gasoline Distribution (Stage 1)	11/15/1994, 59FR42788(N), 59FR64303(F), 60FR07627(C), 60FR32912(C), 60FR43244(A), 60FR57628(C), 60FR62991(S), 61FR07718(A), 61FR58547(N), 62FR09087(A).
Marine Vessel Loading Operations	11/15/1997, 60FR48399(F).
Organic Liquids Distribution (Non-Gasoline)	11/15/2000.
Surface Coating Processes:	
Aerospace Industries	11/15/1994, 60FR45956(F) 61FR04903(C) 61FR66227(C) 63FR15016(A) 63FR46525(A) 65FR3642(a).
Auto and Light Duty Truck (Surface Coating)	11/15/2000.
Flat Wood Paneling (Surface Coating)	Renamed, 64FR63025.
Large Appliance (Surface Coating)	11/15/2000, Redefined scope, 64FR63025, 65FR81134(P).
Magnetic Tapes (Surface Coating)	11/15/1994, 59FR64580(F).
Manufacture of Paints, Coatings, and Adhesives	11/15/2000.
Metal Can (Surface Coating)	11/15/2000.
Metal Coil (Surface Coating)	11/15/2000, 63FR44616(P).
Metal Furniture (Surface Coating)	11/15/2000.
Miscellaneous Metal Parts and Products (Surface Coating)	11/15/2000.
Paper and Other Webs (Surface Coating)	11/15/2000, 63FR55332(P).
Plastic Parts and Products (Surface Coating)	11/15/2000.
Printing, Coating, and Dyeing of Fabrics	11/15/2000.
Printing/Publishing (Surface Coating)	11/15/1994, 61FR27132(F).
Shipbuilding and Ship Repair (Surface Coating)	11/15/1994, 60FR64330(F), 61FR30814(A), 61FR66226(C).
Wood Building Products (Surface Coating)	11/15/2000.
Wood Furniture (Surface Coating)	11/15/1994, 60FR62930(F), 62FR30257(C), 62FR31361(A), 63FR71376(A).
Waste Treatment and Disposal:	
Hazardous Waste Incineration	11/15/2000, 64FR52828(F).
Municipal Landfills	11/15/2000, Renamed as of Today.
Municipal Solid Waste Landfills	11/15/2000, 63FR66672(P).
Off-Site Waste and Recovery Operations	11/15/1994, 61FR34140(F), 64FR38950(A).
Publicly Owned Treatment Works (POTW) Emissions [c]	11/15/1995, Renamed as of Today.
Publicly Owned Treatment Works (POTW) [c]	11/15/1995, 64FR57572(F).
Sewage Sludge Incineration	11/15/2000.
Site Remediation	11/15/2000.
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	Renamed, 59FR51913.
Agricultural Chemicals Production:	
Pesticide Active Ingredient Production	11/15/1997, 64FR33549(F).
4-Chloro-2-Methylphenoxyacetic Acid Production	Subsumed, 64FR63025.
2,4-D Salts and Esters Production	Subsumed, 64FR63025.
4,6-Dinitro-o-Cresol Production	Subsumed, 64FR63025.
Butadiene-Furfural Cotrimer (R–11) Production [d]	Subsumed, 64FR63025.
Captafol Production [d]	Subsumed, 64FR63025.
Captan Production [d]	Subsumed, 64FR63025.
Chloroneb Production	Subsumed, 64FR63025.
Chlorothalonil Production [d]	Subsumed, 64FR63025.
Dacthal (tm) Production [d]	Subsumed, 64FR63025.
Sodium Pentachlorophenate Production	Subsumed, 64FR63025.
Tordon (tm) Acid Production [d]	Subsumed, 64FR63025.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: January 30, 2001]

Industry group source category [a]	Statutory promulgation date/Federal Register citation [b]
Fibers Production Processes:	
Acrylic Fibers/Modacrylic Fibers Production	11/15/1997, 64FR34853(F), 64FR63695(A), 64FR63702(A), 64FR63779(a).
Rayon Production	11/15/2000.
Spandex Production	11/15/2000, 65FR76408(P).
Food and Agriculture Processes:	
Baker's Yeast Manufacturing	Renamed, 64FR63025.
Manufacturing of Nutritional Yeast	11/15/2000, 63FR55812(P).
Cellulose Food Casing Manufacturing	11/15/2000.
Solvent Extraction for Vegetable Oil Production	11/15/2000, 63FR34251(P).
Vegetable Oil Production	11/15/2000, Renamed as of Today.
Pharmaceutical Production Processes	
Pharmaceuticals Production [d]	11/15/1997, 63FR19151(a), 63FR50280(F).
Polymers and Resins Production	
Acetal Resins Production	11/15/1997, 64FR34853(F), 64FR63695(A), 64FR63702(A), 64FR63779(a).
Acrylonitrile-Butadiene-Styrene Production	11/15/1994, 61FR48208(F), 61FR54342(C), 61FR59849(N), 62FR01835(A), 62FR37720(A), 63FR9944(C), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Alkyd Resins Production	11/15/2000.
Amino Resins Production	11/15/1997, 65FR3275(F).
Boat Manufacturing	11/15/2000, 63FR43842(P), Redefined scope, 64FR63025.
Butyl Rubber Production	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N) 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Carboxymethylcellulose Production	11/15/2000.
Cellophane Production	11/15/2000.
Cellulose Ethers Production	11/15/2000.
Epichlorohydrin Elastomers Production	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Epoxy Resins Production	11/15/1994, 60FR12670(F).
Ethylene-Propylene Rubber Production	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Flexible Polyurethane Foam Production	11/15/1997, 64FR34853(F), 62FR05074(C).
Hypalon (tm) Production [d]	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Maleic Anhydride Copolymers Production	11/15/2000.
Methylcellulose Production	11/15/2000.
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [d]	11/15/1994, 61FR48208(F), 61FR54342(C), 61FR59849(N), 62FR01835(A), 62FR37720(A), 63FR9944(C), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production [d]	11/15/1994, 61FR48208(F), 61FR54342(C), 61FR59849(N), 62FR01835(A), 62FR37720(A), 63FR9944(C), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Neoprene Production	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Nitrile Butadiene Rubber Production	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: January 30, 2001]

Industry group source category [a]	Statutory promulgation date/Federal Register citation [b]
Nitrile Resins Production	11/15/2000, 61FR48208(F), 61FR54342(C), 61FR59849(N), 62FR01835(A), 62FR37720(A), 63FR9944(C), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Non-Nylon Polyamides Production	11/15/1994, 60FR12670(F).
Nylon 6 Production	Deleted, 63FR7155.
Phenolic Resins Production	65FR3275(F).
Polybutadiene Rubber Production [d]	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Polycarbonates Production [d]	11/15/1997, 64FR34853(F), 64FR63695(A), 64FR63702(A), 64FR63779(a).
Polyester Resins Production	11/15/2000.
Polyether Polyols Production	11/15/1997, 64FR29420(F), 64FR31895(C).
Polyethylene Terephthalate Production	11/15/1994, 61FR48208(F), 61FR54342(C), 61FR59849(N), 62FR01835(A), 62FR30993(A), 62FR37720(A), 63FR9944(C), 63FR15312(A), 63FR67879(N), 64FR11536(A), 64FR30406(A), 64FR30456(N), 64FR35023(S).
Polymerized Vinylidene Chloride Production	11/15/2000.
Polymethyl Methacrylate Resins Production	11/15/2000.
Polystyrene Production	11/15/1994, 61FR48208(F), 61FR54342(C), 61FR59849(N), 62FR01835(A), 62FR37720(A), 63FR9944(C), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Polysulfide Rubber Production [d]	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Polyvinyl Acetate Emulsions Production	11/15/2000.
Polyvinyl Alcohol Production	11/15/2000.
Polyvinyl Butyral Production	11/15/2000.
Polyvinyl Chloride and Copolymers Production	11/15/2000, 65FR76958(P).
Reinforced Plastic Composites Production	11/15/2000.
Styrene-Acrylonitrile Production	11/15/1994 61FR48208(F), 61FR54342(C), 61FR59849(N), 62FR01835(A), 62FR37720(A), 63FR9944(C), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Styrene-Butadiene Rubber and Latex Production [d]	11/15/1994, 61FR46906(F), 61FR59849(N), 62FR01835(A), 62FR12546(N), 62FR37720(A), 63FR67879(N), 64FR11536(A), 64FR35023(S).
Production of Inorganic Chemicals:	
Ammonium Sulfate Production—Caprolactam By-Product Plants	11/15/2000.
Antimony Oxides Manufacturing	11/15/1997 Promulgation rescheduled; deleted, 64FR63025.
Carbon Black Production	11/15/2000, 65FR76408.
Chlorine Production	11/15/2000.
Chromium Chemicals Manufacturing	Deleted, 61FR28197.
Cyanide Chemicals Manufacturing	11/15/2000, 65FR76408(P).
Cyanuric Chloride Production	Deleted, 63FR7155.
Fumed Silica Production	11/15/2000, Corrected, 64FR63025.
Hydrochloric Acid Production	11/15/2000.
Hydrogen Cyanide Production	Subsumed, 63FR7155.
Hydrogen Fluoride Production	11/15/1997, 64FR34853(F), 64FR63702(A), 64FR63779(a).
Phosphate Fertilizers Production	11/15/1997, 64FR31358(F).
Phosphoric Acid Manufacturing	11/15/1997, 64FR31358(F).
Quaternary Ammonium Compounds Production	Moved, 61FR28197.
Sodium Cyanide Production	Subsumed, 63FR7155.
Uranium Hexafluoride Production:	11/15/2000.
Production of Organic Chemicals:	

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: January 30, 2001]

Industry group source category [a]	Statutory promulgation date/Federal Register citation [b]
Ethylene Processes	11/15/2000, 65FR76408(P).
Quaternary Ammonium Compounds Production	11/15/2000.
Synthetic Organic Chemical Manufacturing	11/15/1992, 59FR19402(F), 59FR29196(A), 59FR32339(N), 59FR48175(C), 59FR53359(S), 59FR54131(S), 60FR05320(A), 60FR18020(A), 60FR18026(A), 60FR63624(C), 61FR31435(A), 61FR07716(A), 61FR43544(N), 61FR64572(A), 62FR02722(A), 63FR67787(A), 64FR20189(C), 65FR3169(a).
Tetrahydrobenzaldehyde Production	Subsumed, 64FR63025, 63FR26078(F).
Miscellaneous Processes:	
Aerosol Can-Filling Facilities	11/15/1997, Promulgation, rescheduled; deleted, 64FR63025.
Benzyltrimethylammonium Chloride Production	11/15/2000.
Butadiene Dimers Production	Renamed, 61FR28197.
Carbonyl Sulfide Production	11/15/2000.
Cellulosic Sponge Manufacturing	11/15/2000, Added 64FR63025.
Chelating Agents Production	11/15/2000.
Chlorinated Paraffins Production [d]	11/15/2000.
Chromic Acid Anodizing	11/15/1994, 60FR04948(F), 60FR27598(C), 60FR33122(C), 61FR27785(A), 61FR04463(A), 62FR42918(A).
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992, 58FR49354(F), 58FR66287(A), 60FR64002(A), 61FR27785(A), 61FR49263(A).
Commercial Sterilization Facilities	11/15/1994, 59FR62585(F), 61FR27785(A), 64FR67789(A), 64FR69637(A).
Decorative Chromium Electroplating	11/15/1994, 60FR04948(F), 60FR27598(C), 60FR33122(C), 61FR27785(A), 61FR04463(A), 62FR42918(A), 64FR69637(A).
Dodecanedioic Acid Production	Subsumed, 59FR19402.
Dry Cleaning (Petroleum Solvent)	11/15/2000, Deleted as of today.
Ethylidene Norbornene Production [d]	11/15/2000.
Explosives Production	11/15/2000.
Flexible Polyurethane Foam Fabrication Operations	11/15/2000.
Friction Products Manufacturing	11/15/2000.
Halogenated Solvent Cleaners	11/15/1994, 59FR61801(F), 59FR67750(C), 60FR29484(C), 63FR24749(S), 63FR68397(A), 64FR45187(A), 64FR56173(A), 64FR67793(A), 64FR69637(A), 64FR67793(A).
Hard Chromium Electroplating	11/15/1994, 60FR04948(F), 60FR27598(C), 60FR33122(C), 61FR27785(A), 61FR04463(A), 62FR42918(A), 64FR69637(A).
Hydrazine Production	11/15/2000.
Industrial Cleaning (Perchloroethylene)—Dry-to-dry machines	11/15/1992, 58FR49354(F), 58FR66287(A), 60FR64002(A), 61FR27785(A), 61FR49263(A).
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992, 58FR49354(F), 58FR66287(A), 60FR64002(A), 61FR27785(A), 61FR49263(A).
Industrial Process Cooling Towers	11/15/1994, 59FR46339(F).
Leather Finishing Operations	11/15/2000 63FR58702(P).
Leather Tanning and Finishing Operations	Renamed as of Today.
OBPA/1,3-Diisocyanate Production [d]	11/15/2000.
Paint Stripper Users	Renamed, 64FR63025.
Paint Stripping Operations	11/15/2000.
Photographic Chemicals Production	11/15/2000.
Phthalate Plasticizers Production	11/15/2000.
Plywood and Composite Wood Products	11/15/2000.
Plywood/Particle Board Manufacturing	Renamed, 64FR63025.
Polyether Polyols Production	Moved, 61FR28197.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: January 30, 2001]

Industry group source category [a]	Statutory promulgation date/Federal Register citation [b]
Pulp and Paper Production	11/15/2000, Promulgation, rescheduled, 64FR63025, 63FR18504(F), 63FR42238(C), 63FR49455(A), 63FR71385(A), 64FR17555(A), 65FR3907(a), 65FR80755(F).
Rocket Engine Test Firing	Moved and renamed, 64FR63025.
Rubber Chemicals Manufacturing	11/15/2000.
Rubber Tire Manufacturing	11/15/2000, 63FR62414(P).
Semiconductor Manufacturing	11/15/2000.
Symmetrical Tetrachloropyridine Production [d]	11/15/2000.
Tetrahydrobenzaldehyde Production	Moved, 64FR63025.
Tire Production	Renamed, 64FR63025.
Wood Treatment	Deleted, 61FR28197.
Categories of Area Sources:	
Asbestos Processing	Deleted, 60FR61550.
Chromic Acid Anodizing	11/15/1994, 60FR04948(F), 60FR27598(C), 60FR33122(C), 61FR27785(A), 61FR04463(A), 62FR42918(A), 64FR69637(A).
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines	11/15/1992, 58FR49354(F), 58FR66287(A), 60FR64002(A), 61FR27785(A), 61FR49263(A), 64FR69637(A).
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992, 58FR49354(F), 58FR66287(A), 60FR64002(A), 61FR27785(A), 61FR49263(A), 64FR69637(A).
Commercial Sterilization Facilities	11/15/1994, 59FR62585(F), 61FR27785(A), 64FR67789(A), 64FR69637(A).
Decorative Chromium Electroplating	11/15/1994, 60FR04948(F), 60FR27598(C), 60FR33122(C), 61FR27785(A), 61FR04463(A), 62FR42918(A), 64FR69637(A).
Halogenated Solvent Cleaners	11/15/1994, 59FR61801(F), 59FR67750(C), 60FR29484(C), 63FR24749(S), 63FR68397(A), 64FR45187(A), 64FR56173(A), 64FR67793(A), 64FR69637(A), 64FR67793(A).
Hard Chromium Electroplating	11/15/1994, 60FR04948(F), 60FR27598(C), 60FR33122(C), 61FR27785(A), 61FR04463(A), 62FR42918(A), 64FR69637(A).
Hazardous Waste Incineration	11/15/2000, 64FR52828(F).
Portland Cement Production	11/15/1997, 64FR31897(F).
Secondary Aluminum Production	11/15/1997, 65FR15689(F), 63FR55491(S), 63FR55489(ap).
Secondary Lead Smelting	11/15/1997, 60FR32587(F), 61FR27785(A), 61FR65334(A), 62FR32209(A), 64FR69637(A).

[a] Only sources within any category located at a major source shall be subject to emission standards under CAA section 112 unless a finding is made of a threat of adverse effects to human health or the environment for the area sources in a category. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] This schedule does not establish the order in which the rules for particular source categories will be proposed or promulgated. Rather, it requires that emissions standards pursuant to CAA section 112(d) for a given source category be promulgated by the specified date.

The markings in the ''Statutory Promulgation Date/**Federal Register** Citation'' column of Table 1 denote the following:

(A): final amendment to a final rulemaking action

(a): proposed amendment to a final rulemaking action

(C): correction (or clarification) published subsequent to a proposed or final rulemaking action

(F): final rulemaking action

(N): notice to announce general information, such as an Agency decision, availability of new data, administrative updates, etc.

(P): proposed rulemaking action

(ap): advance notice of proposed rulemaking action

(R): reopening of a proposed action for public comment

(S): announcement of a stay, or partial stay, of the rule requirements

Moved: the source category is relocated to a more appropriate industry group

Subsumed: the source category is included within the definition of another listed category and therefore is no longer listed as a separate source category

Renamed: the title of this source category is changed to a more appropriate title

Deleted: the source category is removed from the source category list

[c] The Publicly Owned Treatment Works (POTW) Emissions source category had a statutory deadline for regulatory promulgation of November 15, 1995, as established by CAA section 112(e)(5). However, for purposes of determining the 18-month period applicable to the POTW source category under section 112(j)(2), the promulgation deadline was November 15, 1997. This latter date is consistent with the section 112(e) schedule for the promulgation of emissions standards, as published in the **Federal Register** on December 3, 1993 (58 FR 63941).

[d] Equipment handling specific chemicals for these categories or subsets of these categories is subject to a negotiated standard for equipment leaks contained in the Hazardous Organic NESHAP (HON), which was promulgated on April 22, 1994. The HON includes a negotiated standard for equipment leaks from the SOCMI category and 20 non-SOCMI categories (or subsets of these categories). The specific processes affected within the categories are listed in Section XX.X0(c) of the March 6, 1991 **Federal Register** notice (56 FR 9315).

[FR Doc. 01–2565 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6938–2]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree in *Sierra Club* v. *Browner,* Civ. No. 1:00CV02206 (D.D.C.), a lawsuit filed by the Sierra Club and the Group Against Smog and Pollution (GASP) under section 304(a) of the Act, 42 U.S.C. 7604(a). The lawsuit concerns EPA's alleged failure to determine whether various identified areas that are designated as nonattainment for either the 1-hour ozone or PM10 NAAQS attained these NAAQS by their attainment dates. The proposed partial consent decree was lodged with the United States District Court for the District of Columbia on January 12, 2001.

DATES: Written comments on the proposed partial consent decree must be received by March 1, 2001.

ADDRESSES: Written comments should be sent to Kevin W. McLean, Air and Radiation Division (2344A), Office of General Counsel, U.S. Environmental Protection Agency, Ariel Rios Building—North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. Copies of the proposed partial consent decree are available from Samantha Hooks, (202) 564–7606.

SUPPLEMENTARY INFORMATION: The Clean Air Act requires EPA to determine within six months of the applicable attainment date whether areas that are designated as nonattainment for the ozone and PM10 national ambient air quality standards (NAAQS) attained those standards by those dates. See sections 181(b)(2) and 188(b)(2), 42 U.S.C. 7511 ((b)(2) and 7513(b)(2)). If EPA determines that an area failed to attain the relevant NAAQS by the applicable attainment date, the Act provides that such area shall be reclassified by operation of law to the next higher classification. The proposed partial consent decree provides that, with respect to certain areas identified in the complaint, EPA shall sign a notice of final rulemaking by specified dates determining for each identified area either that it attained the relevant NAAQS by the applicable attainment date, or did not attain such NAAQS by such date. In the case where the determination is that the area did not timely attain the NAAQS, the proposed partial consent decree provides that EPA shall inform the public through notice in the **Federal Register**, and identify the appropriate reclassification for that area in the notice of final rulemaking.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed partial consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final consent decree will then be executed by the parties.

Dated: January 17, 2001.

Anna Wolgast,

Acting for General Counsel.

[FR Doc. 01–2567 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6938–7]

Proposed Settlement Agreement, Challenge to Final CAA Action

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, (the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Idaho Clean Air Force et al.* v. *EPA et al.*, Nos. 99–70259 and 70576 (9th Cir.) filed by the Idaho Clean Air Force and the Environmental Defense (formerly Environmental Defense Fund) under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1). The Community Planning Association of Southwest Idaho (COMPASS) was granted leave to intervene as a respondent in the litigation.

DATES: Written comments on the proposed settlement agreement must be received by March 1, 2001.

ADDRESSES: Written comments should be sent to Michael Prosper, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC, 20004. Copies of the proposed settlement agreement are available from Samantha S. Hooks, (202) 564–7606.

SUPPLEMENTARY INFORMATION: This lawsuit challenged a final action by EPA which removed the applicability of the 1987 PM10 national ambient air quality standards, and associated designation and classification, for Northern Ada County, Idaho. 64 FR 12257 (March 12, 1999). EPA's action was primarily based on the promulgation in 1997 of more protective PM standards, including revised PM10 standards. In May of 1999 the U.S. Court of Appeals for the D.C. Circuit issued a decision, *American Trucking Associations et al.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999) which, among other things, vacated the newly-revised PM10 standards. This decision effectively removed the basis for the March 12th Northern Ada County rulemaking. The proposed settlement agreement is being entered into by the parties to the litigation, and by representatives of the Idaho Department of Environmental Quality (IDEQ) and the Idaho Attorney General's Office.

In general, the agreement being proposed provides that the litigation in the 9th Circuit Court of Appeals would be terminated, but with the possibility that it may be re-activated, pending completion of the obligations committed to by the parties in the settlement

agreement. Additionally, IDEQ would develop and submit to EPA by September 30, 2002 a plan to ensure maintenance of the 1987 PM10 standards along with a request to redesignate Northern Ada County as attainment for those standards. During the period preceding such submission, IDEQ would also adopt by early next year and implement, as revisions to the existing State Implementation plan, two air quality rules that must limit and maintain emissions in the County from stationary and mobile sources at levels similar to what would be required if the area were still designated nonattainment for the 1987 PM10 standards. COMPASS has also committed to achieve the emissions reductions agreed to in the settlement agreement that fall within areas over which it exercises implementation responsibility.

In exchange for these undertakings, EPA would agree to delay taking final action on a proposed rulemaking we issued on June 26, 2000 which, if finalized, would reinstate the 1987 PM10 standards and associated nonattainment designation and classification for Northern Ada County. Also, if IDEQ submits a maintenance plan and request for redesignation of the County to attainment as described in the settlement agreement, EPA would agree to take final action on that submission by September 30, 2003.

If various parties to the settlement agreement fail to take certain specified actions by dates established in the agreement, then EPA would be required to take final action with respect to the June 26, 2000 proposed rulemaking. Final action on reinstatement may also occur if the area experiences a violation of the PM10 standards before a redesignation request and maintenance plan are approved by EPA. in addition, for similar failures to act as required by the agreement, any of the parties may re-activate the litigation in the 9th Circuit. Finally, the agreement reflects that EPA has committed to fund technical studies and other air pollution reduction initiatives to be undertaken in the area that are designed to ensure either that PM10 emissions are further minimized or that the air quality is not further degraded.

For period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to proposed settlement agreement 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 settlement agreement 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 settlement agreement will then be executed by the parties.

Dated: January 22, 2001.

Anna Wolgast,

Acting General Counsel.

[FR Doc. 01–2568 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00306; FRL–6762–6]

Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA expects to have approximately $5 million available in fiscal year 2001 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990. The Pollution Prevention Act provides funds to state and tribal programs that address the reduction or elimination of pollution across all environmental media (air, land, and water) and to strengthen the efficiency and effectiveness of state technical assistance programs in providing source reduction information to businesses.

FOR FURTHER INFORMATION CONTACT: *For general information about the grant program contact*: Christopher Kent, Pollution Prevention Division (7409) Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone (202) 260–3480; e-mail address kent.christopher@epa.gov.

For technical and regionally specific information: The EPA Regional Pollution Prevention Coordinator listed under Unit X of this notice.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to state governments, state programs or departments as well as other State institutions, such as universities as well as all federally recognized Native American Tribes. This notice may, however, be of interest to local governments, private universities, private nonprofit entities, private businesses, and individuals who are not eligible for this grant program. If you have any questions regarding the applicability of this action to a particular entity, contact the technical 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 and certain other related documents that might be available electronically, from the EPA 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/fedrgst. These documents are also available at the EPA P2 web site http://www.epa.gov/p2.

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 PPIS 2001 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Pollution Prevention Division (7409), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, ATTN: PPIS.

2. *In person or by courier.* Deliver your comments to: Pollution Prevention Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room 409 East Tower, 401 M St., SW., Washington, DC 20460, ATTN: PPIS.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''kent.christopher@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect, Word, or ASCII file format.

II. Background of the Pollution Prevention Incentives for States Grant Program

More than $60 million has been awarded to over 100 state and tribal organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989. During the past 10 years, PPIS funds have enabled state programs to implement a wide range of pollution prevention activities including over 8,000 pollution prevention assessments, 1,200 workshops, and the development of over 500 pollution prevention case studies. PPIS grants also provide economic benefits to small businesses by funding state technical assistance programs focused on helping the businesses develop more efficient production technologies and operate more cost effectively.

The goals of the PPIS grant program are to assist businesses and industries in identifying better environmental strategies and solutions for complying with Federal and state environmental regulations. PPIS grants are designed to affect the compatibility of businesses environmental and economic decision making, and improving competitiveness without increasing environmental impacts. Successes include decreases in facility emissions and discharges which lead to less stringent regulatory and permitting requirements, increases in production rates that correlate to decreasing environmental costs, elevated investments in new and better technologies, and savings that directly impact the overall profitability of a business. The majority of the PPIS grants fund state-based projects in the areas of technical assistance and training, education and outreach, regulatory integration, data collection and research, demonstration projects, and recognition programs.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Public Law 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible.

1. Section 6603 of the Act defines source reduction as any practice that:

i. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

ii. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources, or protection of natural resources by conservation.

2. Section 6605 of the Act authorizes EPA to make matching grants to states to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed state program will:

i. Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice and to assist in the development of source reduction plans.

ii. Target assistance to businesses for which lack of information is an impediment to source reduction.

iii. Provide training in source reduction techniques.

III. Availability of FY 2001 Funds

EPA expects to have approximately $5 million in grant/cooperative agreement funds available for FY 2001- 2002 pollution prevention activities. The Agency has delegated grant making authority to the EPA regional offices. EPA regional offices are responsible for the solicitation of interest and the screening of proposals.

All applicants must address the national program criteria listed under Unit VI.2.ii. of this document. In addition, applicants may be required to meet supplemental EPA regional criteria. Interested applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit X of this document for more information.

IV. Catalogue of Federal Domestic Assistance

The number assigned to the PPIS program in the Catalogue of Federal Domestic Assistance is 66.708 (formerly 66.900).

V. Matching Requirements

Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50%. For example, the Federal government will provide half of the total allowable cost of the project, and the state will provide the other half. State contributions may include dollars, in-kind goods and services, and/or third party contributions.

VI. Eligibility

1. *Applicants.* In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a state including state universities, and all federally recognized Native American Tribes. For convenience, the term ''state'' in this notice refers to all eligible applicants. Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. State applicants are encouraged to establish partnerships with business and other environmental assistance providers to seamlessly deliver pollution prevention assistance. Successful applicants will be those that make the most efficient use of Federal/state government funding. In many cases, this has been accomplished through partnerships.

2. *Activities and criteria*—i. *General.* The purpose of the PPIS grant program is to support the establishment and expansion of state and tribal multimedia pollution prevention programs. EPA specifically seeks to build state pollution prevention capabilities or to test, at the state level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer and reduction of potentially harmful pollutants across all environmental media: Air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts state-wide. States that include PPIS funding as part of their overall State Performance Partnership Agreement (PPA)/ Performance Partnership Grant (PPG) program satisfy this eligibility criteria.

ii. *2001 national program criteria.* This section describes the national program criteria EPA will use to evaluate proposals under the PPIS grant program. In addition to the national program criteria, there may be regionally specific criteria that the proposing activities are required to address. For more information on the EPA regional requirements, applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit X of this document. As well as ensuring that the proposed activities meet EPA's definition of pollution prevention, the applicant's proposal must include how they address the following three activities:

a. Promote partnering among environmental and business assistance providers. Starting in 1994, EPA required PPIS grant applicants to identify other environmental assistance providers in their states and to work with these organizations to educate businesses on pollution prevention. EPA would like to continue to encourage cooperation among state pollution prevention programs and other environmental and business assistance providers such as the National Institute of Standards and Technology (NIST) programs, Small Business Development Centers (SBDCs), Small Business Assistance Programs (SBAPs), Office of Enforcement and Compliance Assistance (OECA) Compliance Assistance Centers, the large number of university cooperative extension programs and other business and environmental assistance programs at the state level, as well as other well established nonregulatory programs. In part, through the PPIS grant funds, EPA is striving to support the development of a coordinated network of state environmental service providers that leverages the expertise of the various environmental assistance organizations and shows an ability to work jointly in an effort to promote pollution prevention in the state. EPA wants to help foster a cooperative network of environmental assistance providers since cooperation among state business and environmental assistance providers is paramount in this era of shrinking Federal funded programs. EPA would like to ensure that state pollution prevention programs and other assistance providers establish cooperative working relationships which make best use of their respective areas of expertise and most effectively serve their clients. State and tribal grant applicants should identify the partnering organization(s) they plan to work with during the grant funding cycle and demonstrate or document the relationship. This can be done, for example, through a letter of agreement, a joint statement, or principles of agreement signed by both parties or multiple parties. If the partnership involves providing Federal funds to ineligible entities, the grantees shall abide by state procurement regulations, as required by state law.

b. Advance state environmental goals. EPA believes it is important for the sustainability of state pollution prevention programs to complement the goals and strategies of the state's environmental strategic plans and/or the activities included under the National Environmental Performance Partnership System (NEPPS) in an effort to show that the pollution prevention work they are undertaking complements and supports the state's environmental strategic plans. If the state environmental program lacks a single comprehensive environmental strategy, applications must show a correlation between the proposed activity and the goals or objectives of the state's environmental program. EPA believes pollution prevention programs will continue to be valuable to the state environmental agency's top management if they can demonstrate how their actions will help advance state goals. EPA would like to ensure that pollution prevention is integrated at the state level by providing a service which supports the state's strategic plan. The grant application narrative should demonstrate how pollution prevention activities will advance state environmental goals as stated in the state environmental strategic planning documents or either PPA or PPG.

c. Promote accomplishments within the state's environmental programs. EPA realizes the importance of documenting the program effectiveness and communicating those results to the affected media office. EPA wants to ensure that the environmental programs in the state are aware of the contributions of the pollution prevention program within their sectors, programs, and geographic areas by making a link between the regulatory program and the activities of the pollution prevention program. By creating this positive feedback mechanism to the state's regulatory program, the grantee can market their accomplishments and consequently help promote the sustainability of the pollution prevention program. Through the PPIS grants, EPA is working to encourage better awareness by the state regulatory and media programs of how pollution prevention and the state pollution prevention programs are helping the regulatory programs address increasingly complex environmental management problems. Applications must include what activities the pollution prevention program will undertake to ensure communication and feedback to the regulatory and other environmental programs showing how pollution prevention is helping to advance multimedia environmental protection.

3. *Identifiable measures of success.* For each of the activities identified in the application, the applicant must identify how and what criteria they are using to track the effectiveness of the activity. Measures of success should be either measures of environmental improvement, or should be directly linked to such measures. For example, success could be identified by demonstrating a direct link between the project's activities and in quantifiable reductions in pollution generated or in the natural resources used. Most of the EPA regional offices have specific measurement structures (Region X in Global Reporting Initiative, NEWMOA's state measures in Region I, Region VIII new measurement project) in which to apply the grant activities towards. Please contact the appropriate Regional Pollution Prevention Coordinator, listing under Unit X of this document for more information on what measurement tool they are using.

4. *Program management.* Awards for FY 2001 funds will be managed through the EPA regional offices. Applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit X of this document, to obtain specific deadlines for submitting proposals. National funding decisions will be made by May 2001.

VII. Use of P2Rx Regional Centers

A priority that EPA considers important to strengthen state P2 activities and aid the formation of partnerships with other business assistance providers is the Pollution Prevention Resource Exchange (P2Rx). EPA has allocated a portion of its state grant funds to develop and sustain regional pollution prevention centers that facilitate and serve state needs in coordinating training and information development. EPA believes that the P2Rx network, which connects and coordinates regional pollution prevention information centers, can benefit both states programs and their clients by improving the quality and availability of pollution prevention technical information, sharing information, minimizing duplication of efforts in developing materials for training and technical assistance providers, providing for the development of quality peer reviewed P2 information, and expanding their understanding of how other states are addressing the needs of business assistance providers. For more information, visit the P2Rx web site at http://www.p2rx.org.

EPA would like the grantees to use the resources available through their regional P2Rx center throughout the entire grant process. After 10 years, there is a large amount of P2 information available, but finding high quality resources can be difficult. Thus, the creation of these P2Rx centers, can provide greater access to P2 value-added information.

For example, grantees should contact the appropriate P2Rx center prior to starting any work to find out what information is currently available within that sector. Below is a listing of the regionally specific topics for each of the P2Rx centers. As products are generated from the grant, all work products (i.e., including but not limited to flyers, fact sheets, pamphlets, handbooks, model curricula, assessment and audit tools, videos, and event brochures) produced with Federal PPIS funds will be shared with the appropriate regional P2Rx center. To facilitate the transfer of information generated by pollution prevention grant dollars, all products from a P2 grant must be shared with the appropriate regional center. Please contact the EPA Regional Pollution Prevention center which is researching your grant topic.

The following list shows the P2Rx centers and the topic they are researching and synthesizing information on:

Regions I–II (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont) P2Rx Center - The Northeast Regional P2 Information Center serves as the topic hub on marinas, mercury, and metal fabrication projects.

Regions III–IV: (Delaware, Alabama, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia) P2Rx Center - The Waste Reduction Resource Center serves as the topic hub on Department of Defense and environmental management systems projects.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin) P2Rx Center - The Great Lakes Regional Pollution Prevention Roundtable (GLRPPR) serves as the topic hub for printing and regulatory integration projects.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas) P2Rx Centers- The Southwest P2 InfoSource serves as the topic hub for electric utilities, gas and oil, and lean manufacturing projects.

Region VII (Iowa, Kansas, Missouri, Nebraska) P2Rx Center - The Pollution Prevention Regional Information Center serves as a topic hub for Contained Animal Feeding Operations (CAFO), green chemistry, green procurement, hospitals, and general P2 information.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) P2Rx Center - The Peaks to Prairies Pollution Prevention Information Center serves as the topic hub for autobody, P2 in outdoor recreation, residential construction and Smart Growth projects.

Region IX (Arizona, California, Hawaii, Nevada) P2Rx Center - The Western Regional Pollution Prevention Network serves as the topic hub for auto repair, and hospitality projects.

Region X (Alaska, Idaho, Oregon, Washington) P2Rx Center - The Pacific Northwest Pollution Prevention Resource Center serves as the topic hub for the aerospace industry, fiberglass fabrication, metal fabrication, metal finishing, metal machining, paint and coating manufacturing, and ship building and repair.

VIII. Proposal Narrative Format

To clearly document the activities listed in the grant proposal, the narrative portion of the application should include a summary of proposed activities using the following format:

1. A description of the proposed work and a timeline of activities.

2. A list of tasks that will be carried out.

3. A list of the resulting deliverables that will be produced.

IX. Progress Report

Progress reports are due to the EPA project officer every April and October after the project period is over 1 month old. A final report is due within 90 days of the end of the grant period.

In addition to the EPA project officer's regionally specific required number of copies of deliverables, please forward one copy of each of the semi-annual progress reports and the final reports (and deliverables) to the Pollution Prevention Division in Washington, DC. Please address the documents to: PPIS Grant Products, Pollution Prevention Division (7409), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

The narrative in the progress reports should refer back to the stated objectives and timeline of the original grant application. Beneath each objective, the objective's current status should be reported. Any substantive diversion from a stated objective, or any deviation from the proposed timeline should be explained. Only the activities required under the grant, which meet EPA's definition of pollution prevention, should be reported.

At a minimum, the progress reports should also include the following:

1. A short summary of the accomplishments for the reporting period.

2. Progress on completing individual project tasks.

3. The planned and actual schedules for task completion.

4. Projected accomplishments for the next reporting period.

5. Data on financial expenditures by budget category.

Any printed deliverables required under the grant should be enclosed with the first report following the date the deliverable was due to be produced.

A final report will be required upon completion of the grant.

EPA is working on developing a standard electronic format for use by PPIS grantee on reporting their grant activities. Please contact the EPA Regional Pollution Prevention Coordinator, listed under Unit X of this document, for more information on the GranTrack Reporting Form.

X. Regional Pollution Prevention Coordinators

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Kira Jacobs, 1 Congress St., Suite 1100/SPP, Boston, MA 02114–2023, (617) 918–1817, e-mail: jacobs.kira@epa.gov.

Region II: (New Jersey, New York, Puerto Rico, Virgin Islands) Deborah Freeman (SPMMB), 290 Broadway, 25th Floor, New York, NY 10007, (212) 637–3730, e-mail: freeman.deborah@epa.gov.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia) Lorna Rosenberg, (3E100), 1650 Arch St., Philadelphia PA 19103–2029, (215) 814–5389, e-mail: rosenberg.lorna@epa.gov.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Dan Ahern, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–9028, e-mail: ahern.dan@epa.gov.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin) Phil Kaplan, (DRP-8J), 77 West Jackson Blvd., Chicago, IL 60604–3590, (312) 353–4669, e-mail: kaplan.phil@epa.gov.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas) Joy Campbell, (6EN-XP), 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202, (214) 665–0836, e-mail: campbell.joy@epa.gov.

Region VII: (Iowa, Kansas, Missouri, Nebraska) Chilton McLaughlin, (ARTD/TSPP), 901 N 5th St., Kansas City, KS 66101, (913) 551–7517, e-mail: mclaughlin.chilton@epa.gov.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) Linda Walters, (8P2-P2), 999 18th St., Suite 500, Denver, CO 80202–2405, (303) 312–6030, e-mail: walters.linda@epa.gov.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam) Leif Magnuson (WST-7), 75

Hawthorne Ave., San Francisco, CA 94105, (415) 744–2153, e-mail: magnuson.leif@epa.gov.

Region X: (Alaska, Idaho, Oregon, Washington) Carolyn Gangmark, 01–085, 1200 Sixth Ave., Seattle, WA 98101, (206) 553–4072, e-mail: gangmark.carolyn@epa.gov.

XI. Submission to Congress and the Comptroller General

Under the Agency's current interpretation of the definition of a ''rule,'' grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grant administration, Grants, Pollution prevention.

Dated: January 19, 2001.

William H. Sanders,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 01–2572 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6938–6]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986

AGENCY: Environmental Protection Agency.

ACTION: Notice of reopening of Public Comment period.

SUMMARY: This notice informs the public that the period for submission of comments in relation to the above-referenced Prospective Purchaser Agreement is hereby extended for an additional 30 days from the date of publication of this Notice. In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601–9675, as amended (''CERCLA''), the proposed agreement will allow reuse of an abandoned industrial facility associated with the Metcoa Radiation Superfund Site (''Site'') in Pulaski, Lawrence County, Pennsylvania, and will resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against the Purchaser.

ADDRESSES: Comments should be submitted to Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650, Arch Street, Philadelphia, PA 19103, or by e-mail to *canning.suzanne@epa.gov*, and should refer to the ''Metcoa Radiation Superfund Site Prospective Purchaser Agreement'' and ''EPA Docket No. CERC–PPA–2000–0008.'' The proposed agreement and additional background information relating to it may be examined and/or copied at the above EPA office. A copy of the proposed agreement may be obtained by mail from Suzanne Canning at the above address.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published in the **Federal Register** of December 13, 2000 (65 FR 77876), a Notice of Prospective Purchaser Agreement in relation to the Metcoa Radiation Superfund Site. In the public interest, the Environmental Protection Agency has reopened and extended to the Public Comment period in relation to this agreement for an additional thirty (30) days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Humane L. Zia (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; phone: (215) 814–3454.

Dated: January 19, 2001.

Bradley M. Campbell,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 01–2569 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6935–6]

Underground Injection Control Program: Substantial Modification to an Existing State-Administered Underground Injection Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on a substantial modification to the Wyoming 1422 underground injection control program.

SUMMARY: The Safe Drinking Water Act (SDWA) establishes the Underground Injection Control (UIC) Program, which is designed to protect present and future underground sources of drinking water (USDWs) and to prevent underground injection through wells that may endanger these drinking water sources. The SDWA provides for states to apply for and receive approval from the Environmental Protection Agency (EPA) to administer their own UIC programs, if the State regulations and statutes meet EPA's minimum requirements as specified in 40 CFR parts 144, 145, and 146 or the ''protective'' standard specified in section 1425 of the SDWA for oil and gas related wells. One of these requirements specified in 40 CFR 144.7 is the identification of USDWs. If an aquifer meets the definition of a USDW as stated in 40 CFR 144.3, injection into it through a Class I, II, or III injection well can occur only if the aquifer is exempted. Exemption from classification as a USDW can take place only if it is exempted from the classification as a USDW according to the criteria in 40 CFR 146.4. Therefore, injection through a Class I, II, or III injection well into any aquifer that meets the classification as a USDW requires a demonstration that the aquifer is not currently serving a drinking water system and is not expected to do so in the future. Certain exemptions are considered substantial program revisions. Once the State program receives final approval, subsequent modifications to the programs can be requested by the State and accomplished through the specifications under 40 CFR 145.32. Upon receiving a request for modification of a State program, EPA determines if the requested modification is ''substantial'' or ''non-substantial.'' A request for an Aquifer Exemption is one type of program modification that can be requested by the State. An Aquifer Exemption request often accompanies a Draft Permit for an injection well that

will inject into a USDW that can be proven to meet criteria specified in 40 CFR 146.4. If the Aquifer Exemption is considered a ''non-substantial'' modification to the existing State program, then it can be evaluated and approved or disapproved by the EPA Regional Administrator. However, if the aquifer proposed for exemption contains formation fluids with less than 3,000 mg/l Total Dissolved Solids (TDS) which is related to any Class I well or is not related to action on a permit (except in the case of rule authorized enhanced recovery operations in oil fields), then the Aquifer Exemption represents a ''substantial'' modification to the State program. In this case, according to 40 CFR 145.32, the proposed program revision shall be published in the **Federal Register** to provide the public an opportunity to comment for a period of at least 30 days. The authority to approve or disapprove the proposed change lies with the EPA Administrator. The proposed substantial revision to the Wyoming 1422 UIC program for which public comments are being solicited is a request for the exemption of approximately 1 square mile of the Lance Formation at an approximate depth of 3,800 to 6,500 feet below ground surface surrounding two non-hazardous Class I injection wells in the Powder River Basin within Johnson County, Wyoming.

Public comments are encouraged and a public hearing will be held upon request. A request for a public hearing should be made in writing and should state the nature of the issues proposed to be raised at the hearing. A public hearing will be held only if significant interest is shown.

DATES: EPA must receive public comment, in writing, on the proposed modification of the Wyoming 1422 program by March 1, 2001.

ADDRESSES: Send written comments to Valois Shea, Ground Water Unit (8P–W–GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, by the deadlines provided above. Copies of the application and pertinent materials are available for review by the public between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations: Environmental Protection Agency, Region VIII, Ground Water Unit, 4th Floor North Terrace, 999 18th Street, Denver, CO 80202–2466; and Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, WY 82002.

FOR FURTHER INFORMATION CONTACT: Valois Shea, US EPA Region VIII, 8P–W–GW, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6276.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 25, 2000, COGEMA Mining, Inc., (COGEMA) and the Wyoming Department of Environmental Quality (WDEQ) submitted to EPA a request to grant an Aquifer Exemption for the Lance Formation in the areas contained within Township 44 North, Range 76 West, 6th P.M. , SW¼ NW¼ Section 5, SE¼ NW¼ Section 5, SW¼ Section 5, NE¼ Section 7, NW¼ SE¼ Section 7, NE¼ SE¼ Section 7, NW¼ NW¼ Section 8, NE¼ NW¼ Section 8, SW¼ NW¼ Section 8, and NW¼ SW¼ Section 8, surrounding two Class I Non-Hazardous deep injection wells, the COGEMA DW No. 3 and the COGEMA DW No. 2, in Johnson County, WY. The total area of the Lance Formation included in the proposed exemption is approximately 1 square mile. The proposed injection intervals are approximately 3,800 to 6,500 feet in depth below ground surface for each well. The proposed injection interval is based on the depth of the Lance Formation intersected by adjacent Class I Non-Hazardous deep injection well, COGEMA DW No. 1. A similar exemption of a portion of the Lance Formation was proposed for the COGEMA DW No. 1 in the **Federal Register** on August 27, 1998 (63 FR 45810). The notice also solicited public comment of the proposed action. No public comments were received, and the final notice of the Aquifer Exemption was included in the **Federal Register** on March 26, 1999 (64 FR 14799).

The Lance Formation fluids contain less than 3,000 mg/l Total Dissolved Solids (TDS), dictating that this Aquifer Exemption be a substantial revision of the Wyoming Underground Injection Control (UIC) program approved under section 1422 of the Safe Drinking Water Act. Criteria for classification of a program revision as substantial or not, are in UIC Guidance #34, Guidance for Review and Approval of State UIC Programs and Revisions to Approved State Programs. The procedures to follow to approve or disapprove substantial program revisions in the UIC program are in § 145.32 and in UIC guidance #34. The aquifer proposed for exemption has been determined by WDEQ to be too deep to be considered as an economically feasible source of drinking water. EPA has examined the Aquifer Exemption request, the accompanying information, and responses from WDEQ and COGEMA to EPA requests for additional supporting information, and, for reasons described herein, recommends approval of this request to exempt the designated portions of the Lance Formation from classification as a USDW.

II. Background

COGEMA operates the Christensen Ranch in-situ leaching uranium mine within the Wasatch Sandstone Formation in Johnson and Campbell Counties, WY. The Wasatch Formation overlies the Lance Formation by about 2,600 feet at the mine site. The mining operation has comprised five well fields to date. The operation has reached the phase where large scale restoration of the groundwater within all the well fields is required to close the operation. Two Class I Non-Hazardous deep injection wells are currently being used to inject the above-mentioned waste stream into previously exempted portions of the Lance Formation. However, with the current disposal capacity of the two existing wells, the rate of the restoration process is limited. A large portion of the mined aquifer is on ''standby'' until either (a) the disposal capacity can be increased by the addition of two new wells, or (b) the restoration process is completed in other mined-out areas. The additional disposal rate capacity created by these two proposed wells will increase the rate of the restoration process significantly, restoring the Wasatch Formation water quality to its class of use standards two years sooner than without the two additional wells. The mined areas on ''standby'' awaiting restoration must require a continuous bleed-off because a negative pressure regime must be maintained in order to keep the underground water flow directed into the mining area to prevent the contamination of adjacent areas of the aquifers (the Wasatch Formation). To maintain the negative pressure, water must continuously be pumped out of the mined areas in standby mode. The additional two years required for complete restoration without the two new wells would result in approximately 31 million additional gallons of waste stream to be disposed of that could be avoided by the construction of two new wells, increasing the disposal capacity.

Groundwater restoration is conducted to return the groundwater affected by mining to its baseline condition or to a condition consistent with its pre-mining or potential use upon completion of mining activities. After the restoration process is completed, the concentrations of contaminants are reduced to levels below drinking water standards. For the successful restoration of the

groundwater quality within the mined-out areas of the Wasatch Formation, a wastewater disposal capacity of 300 to 500 gallons per minute (gpm) will be required over the next 6 years.

III. Injectate

The injectate will consist of operational bleed streams from commercial in-situ leaching uranium mining operations as well as fluids from the restoration of the aquifer. The constituents on the injectate include the following process and restoration bleed streams: normal overproduction (well field bleed) streams, yellow cake wash water, laboratory wastewater, reverse osmosis brine, and groundwater sweep solutions. The bleed streams are defined as non-hazardous, and as beneficiation wastes exempt from regulation under the Resource Conservation and Recovery Act as stipulated by the Bevill Amendment (40 CFR 261.4(b)(7)).

IV. Basis for Approval of Proposed Aquifer Exemption

The information provided by COGEMA in the reports included in the docket adequately addresses the requirements of 40 CFR 146.4 supporting approval of the proposed Aquifer Exemption request for the Lance Formation.

146. 4 Criteria for exempted aquifers

An aquifer or a portion thereof which meets the criteria for an ''underground source of drinking water'' in § 146.3 may be determined under 40 CFR 144.8 to be an ''exempted aquifer'' if it meets the following criteria:

(a) It does not currently serve as a source for drinking water;

The nearest documented well completed in the Lance is over 24 miles to the west of the site. The exact use of this well is unknown, but appears to be associated with oil or gas development. Approximately 30 miles to the west, the Lance outcrops to the surface and wells developed there are for livestock use. Where the Lance Formation occurs near the surface at the western edge of the Powder River Basin 30 miles southwest of the proposed exemption area, five wells jointly completed in the Lance and Fox Hills formations formerly served as public water supplies to the municipalities of Midwest and Edgerton, WY, until 1997. At that time, the wells were abandoned because of low water productivity (40 gpm sustainable flow) and the expense of treatment that would be required to continue using these wells as a public water supply. The towns of Midwest and Edgerton have determined that piping in pre-treated water 50 miles from Casper is more economically feasible than continuing operation of the wells completed in the Lance/Fox Hills formations, even at the relatively shallow depth of 1,500 to 2,000 feet. Therefore, the Lance is no longer supplying water to a public drinking water system within 30 miles of the proposed Aquifer Exemption area.

(b) It cannot now and will not serve as a source of drinking water because:

. . . (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical.

The depth of the Lance Formation within the Aquifer Exemption area ranges from 3,800 to 6,500 feet based on the information from the COGEMA DW No. 1 well. The Powder River Basin consists of a deep syncline. The Aquifer Exemption area occurs very near the deepest occurrence of the Lance Formation within this syncline.

Alternatively, the Wasatch Formation overlies the Lance Formation in the Aquifer Exemption area and provides a more shallow, potential water supply source available for use in the area. According the USGS publications referenced by COGEMA, any water supply wells (aside from water flood wells related to oil production) in the proposed Aquifer Exemption area are completed in the Wasatch Formation. The Wasatch Formation is a high quality, prolific aquifer, located at approximately 1,200 feet in depth or shallower throughout the Powder River Basin, including the proposed Aquifer Exemption area. The Wasatch Formation, alone, contains a volume of water that would supply a population of approximately 1.3 million people for 100 years. Given this abundant, shallow supply of high quality groundwater, it is reasonable to conclude that the deeper Lance Formation will never be required to provide a source of drinking water in the area of the Aquifer Exemption.

COGEMA provided a cost evaluation for the capital costs and estimated operating costs for developing a private (50 gpm) and a public (750 gpm) drinking water well, including treatment costs based on the water quality analysis of samples collected from the Lance Formation as a water supply source within the Aquifer Exemption area. The costs to develop the Lance within the exemption area were compared with estimated costs to develop the Wasatch Formation as an alternative public water supply (at the 750 gpm rate). The incremental cost increase for using the Lance Formation water versus Wasatch Formation water as a drinking water source for the public water supply is approximately $3,691,250. The incremental increase in operations and maintenance cost of using the Lance water over the Wasatch water as a drinking water source would be $2.40/1,000 gallons.

The Midwest-Edgerton public water supply scenario should be noted as the most compelling support for the approval of this Aquifer Exemption request and the feasibility of using the Lance Formation as a public water supply. The five wells were abandoned in favor of piping in an alternative water supply. The decision to abandon these wells was based on the economic impact of the need to treat the water and the low production rates of the wells, even though the costs of development had already been expended. Furthermore, the wells tapped shallower portions of the Lance Formation compared to the depth of the Lance within the proposed Aquifer Exemption area.

In summary, the Lance Formation probably will never be considered to be an economically feasible source of drinking water in the area of the Aquifer Exemption because of the great depth, low water production capacity, and treatment costs that will be necessary based on the Midwest-Edgerton wells. The cost of developing the Lance Formation as a drinking water supply within the proposed Aquifer Exemption area is high compared to that of developing shallow, more prolific, and higher quality sources of drinking water, such as the Wasatch Formation. The Wasatch is better suited for development in this area as a source of drinking water due to higher producing capability, significantly better water quality, and no water treatment costs.

V. Regulatory Impact

There will be no modification of regulations in the Wyoming DEQ Water Quality Rules and Regulations as a result of this proposed program modification. The Code of Federal Regulations 40 CFR part 147, subpart ZZ, which codifies the State of Wyoming UIC 1442 and 1445 program within the Federal regulations, will be modified to include this program modification once approval has been granted by the EPA Administrator.

Dated: January 11, 2001.

D. Edwin Hogle,

Director, Ground Water Program, Office of Partnerships and Regulatory Assistance, Region VIII.

[FR Doc. 01–2570 Filed 1–29–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 13, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to acquire COAD Limited Partnership No. 2, Missoula, Montana, and thereby indirectly acquire COAD Limited Partnership No. 3, Missoula, Montana, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, January 24, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–2501 Filed 1–29–01; 8:45 am]

BILLING CODE 6210–01–S

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 February 23, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Trustmark Corporation, Jackson, Mississippi; to merge with Barret Bancorp, Inc., Barretville, Tennessee, and thereby indirectly acquire voting shares of Peoples Bank, Barretville, Tennessee, and Somerville Bank & Trust Company, Somerville, Tennessee.

Board of Governors of the Federal Reserve System, January 24, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–2502 Filed 1–29–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 01-2167) published on page 7652 of the issue for Wednesday, January 24, 2001.

Under the Federal Reserve Bank of Cleveland heading, the entry for F.N.B. Corporation, Hermitage, Pennsylvania, is revised to read as follows:

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to merge with Citizens Community Bancorp, Inc., Marco Island, Florida, and thereby indirectly acquire voting shares of Citizens Community Bank of Florida, Marco Island, Florida.

In connection with application, Applicant also has applied to acquire Citizens Financial Corporation, Marco Island, Florida, and thereby engage in loan origination activities, pursuant to § 225.28(b)(1) of Regulation Y, and CCB Mortgage Corporation, Marco Island, Florida, and thereby engage in mortgage brokerage activities, pursuant to § 225.28(b)(1) of Regulation Y. F.N.B. Corporation has secured a stock option to acquire up to 19.9 percent of Citizens Community Bancorp, Inc.

Comments on this application must be received by February 20, 2001.

Board of Governors of the Federal Reserve System, January 24, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–2500 Filed 1–29–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency information collection activities: Proposed collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. Organizing an Institutional Investigation Assistance Program: A Feasibility Study—NEW—A review group charged with examining the Office of Research Integrity's role in handling allegations of research misconduct developed numerous recommendations. One of the recommendations stated that ''HHS should encourage the development of a consortium-based approach to be used by awardee institutions that do not have the capacity to conduct the fact-finding process, or at which there is otherwise inadequate institutional or organizational capacity.'' The Office of Research Integrity is proposing a survey of research institutions, educational institutions and related organizations to assess the expressed level of interest in the development of consortia. Respondents: Businesses or other for-profit, non-profit institutions; Number of Respondents: 1,000; Burden per Response: 20 minutes; Total Burden: 333 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: January 23, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01–2540 Filed 1–29–01; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0545]

Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods'' dated January 2001. The guidance document provides recommendations to blood establishments for the use of FDA cleared automated blood cell separators for the collection of both single and double units of red blood cells. The guidance document also describes information to be included in a licensed application or supplement. The guidance document announced in this notice finalizes the draft guidance document entitled ''Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods'' dated July 1998.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301-827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods'' dated January 2001. The guidance document provides recommendations to blood establishments for the use of FDA cleared automated blood cell separators for the collection of both single and double units of red blood cells. The guidance document includes recommendations for donor selection criteria and product quality control and describes registration, licensing, and other procedures. The guidance document announced in this notice has been revised based on comments received on the draft guidance document entitled ''Guidance for Industry: Recommendations for Collecting Red Blood Cells by Automated Apheresis Methods'' announced in the **Federal Register** of July 27, 1998 (63 FR 40129), and finalizes that draft guidance document.

This guidance is being issued consistent with FDA's good guidance regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This guidance document represents the agency's current thinking with regard to collecting red blood cells by automated apheresis methods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. This document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of this document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document at http://www.fda.gov/cber/guidelines.htm.

Dated: December 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–2489 Filed 1–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Action; Competitive Sale of Public Lands in Clark County, NV

The following lands have been designated for disposal under Public Law 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343); they will be sold competitively in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713,1719, and 1740) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 10: W½NW¼NW¼SW¼,
W½NW¼SW¼SW¼,
E½SE¼SE¼NE¼, W½NE¼NE¼SE¼,
E½SW¼NE¼SE¼, E½SE¼NE¼SE¼,
E½NE¼SW¼SE¼, E½NE¼SE¼SE¼,
E½SW¼SW¼SE¼,
Sec. 12: SE¼SE¼NW¼NE¼,
SW¼SE¼NE¼NE¼,
N½NE¼SE¼NE¼,
NE¼NW¼SE¼NE¼,
W½NW¼SE¼NE¼,
NE¼NW¼NE¼SE¼,
SW¼NE¼NE¼SE¼,
SE¼NE¼SE¼SE¼, N½SE¼SE¼SE¼,
NE¼SW¼NE¼SE¼,
SE¼NW¼SE¼SE¼,
NE¼NE¼NE¼SW¼,
T. 22 S., R. 61 E.,
Sec. 30: NW¼NE¼NE¼SE¼,
SW¼NE¼NE¼SE¼,
SE¼NW¼NE¼SE¼,
NE¼SW¼NE¼SE¼,
T. 19 S., R. 60 E.,
Sec. 19: SW¼SW¼NE¼
Sec. 18: E½NE¼NE¼NE¼

North Las Vegas

T. 19 S., R. 61 E.,
Sec. 16: Lot 13 (south half)
Sec. 17: Lots 1 through 11, Lots 13 through 16 and Lot 18
Sec. 18: Lots 13 and 20
Sec. 19: Lots 5, 6, 10 through 14, 17, 18, 22, 23, 25, 26, 28
Sec. 20: Lots 1 through 7, 9 through 17, 19, 21
Sec. 21: Lots 4 and 9

Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale. Any applications filed after this notice for rights-of-way, permits, leases, and other uses will be returned to the applicants with no action taken. If the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests.

The terms and conditions applicable to the sale are as follows:

All Parcels Subject to the Following

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees, retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid and existing rights. Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:15 p.m., Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgements, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or

(6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Maps delineating the individual parcels and the appraisal reports for each parcel will be available for public review at the BLM's Las Vegas Field Office on or before March 1, 2001.

With the exception of the North Las Vegas parcel each parcel will be offered via the Internet, by sealed bid, and at oral auction. Pre-auction bidding via the Internet will be conducted from April 2, 2001, through May 2, 2001. Internet bidding procedures will be available on or before April 2, 2001 at *www.auctionrp.com.* All sealed bids must be received in the BLM's Las Vegas Field Office (LVFO), 4765 Vegas Drive, Las Vegas, NV 89108, by no later than 4:15 p.m. PST, May 7, 2001. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised fair market value (FMV), with a separate bid submitted for each parcel.

Each sealed bid and the highest written Internet bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid. The bid deposit for the highest qualified written Internet bid must be received at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108 by 4:15 PST on May 4, 2001. The highest qualified written Internet bid or sealed bid on each parcel will determine the starting monetary point for oral bidding. If no written Internet bids or sealed bids are received, oral bidding will begin at the appraised FMV.

All parcels will be offered for competitive sale by oral auction beginning at 10:00 a.m. PDT, May 9, 2001, at the Clark County Commission

Chambers, Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada. Registration for oral bidding will begin at 8:30 a.m. the day of sale and will continue throughout the auction. All oral bidders are required to register.

The highest qualifying bid for any parcel, whether written Internet, sealed, or oral, will be declared the highest bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The remainder of the full bid price, whether written Internet, sealed or oral, must be paid within 180 calendar days of the date of the sale. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. Unsold parcels may be offered on the Internet beginning May 28, 2001. Internet auction procedures will be available at *www.auctionrp.com* on or before May 28, 2001. If unsold on the Internet, parcels may be offered at future auctions without additional legal notice.

Any bidder wishing to bid on the ''North Las Vegas'' parcel must sign an acknowledgment of the ''City of North Las Vegas Conveyance Agreement''. The North Las Vegas parcel will only be offered at the oral auction, and is not available for pre-bidding via the internet or for sealed bid, nor will it be offered after the oral auction except in accordance with the following procedures. The apparent high bidder will be allowed 30 days from the date of the oral auction, May 9, 2001, to reach a Development Agreement with the City of North Las Vegas. Failure to reach an agreement within 30 days will disqualify the apparent high bidder, their deposit will be returned and the property shall be offered to the next highest bidder at his/her highest bid who will also be allowed 30 days from the date of the offer in which to reach a final development agreement with the City of North Las Vegas. Failure by the next highest bidder to reach an agreement within 30 days will disqualify the apparent high bidder, their deposit will be returned, the sale cancelled and the property may be re-offered for sale at a later date without further legal notice.

Federal law requires that bidders must be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, is available at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by calling (702) 647–5114. Some, but not all of this information will also available on the Internet at http://www.nv.blm.gov. Click on Land Sales.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined not in the publics interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law. Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: January 12, 2001.

Mark T. Morse,

Field Manager.

[FR Doc. 01–2495 Filed 1–29–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2001 is 6.375 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2000, through and including September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Larry Schluntz, Economist, Reclamation Law and Revenues Management Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: 303–445–2901.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the

formulation and evaluation of plans for water and related land resources is 6.375 percent for fiscal year 2001.

This rate has been computed in accordance with section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 6.29 percent. Rounding this average yield to the nearest one-eighth percent is 6.25 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 2000 to 2001. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.375 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: November 16, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 01–2497 Filed 1–29–01; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–005]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 8, 2001 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., 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–683 (Review)(Fresh Garlic from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 21, 2001.)
5. Inv. No. 731–TA–652 (Review)(Aramid Fiber from the Netherlands)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 22, 2001.)
6. Outstanding action jackets: None.

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.

By order of the Commission:

Issued: January 24, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–2676 Filed 1–26–01; 1:47 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Program

Bureau of Justice Statistics; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Deaths In Custody, 2000—Report on Inmates Under Jail Jurisdiction/Inmates in Private and Multi-Jurisdiction Jails.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 19, 2000, at Vol 65 FR 62752, allowing for a 60-day public comment period on this information collection. No comments were received by the Bureau of Justice Statistics. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for ''thirty days'' until March 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

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 Information and Regulatory Affairs, Attn.: Mr. Nathan Knuffman, 202–395–6466, Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

If you have additional comments, suggestions, or additional information, please write Jan M. Chaiken, Director, Bureau of Justice Statistics, 810 Seventh St. NW, Washington, DC 20531. If you need a copy of the collection instrument with instructions, or have additional information, please contact Christopher J. Mumola at 202–307–5995, or via facsimile at 202–514–1757.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection. New data collection.

(2) The title of the Form/Collection: Deaths in Custody, 2000—Report on Inmates Under Jail Jurisdiction/Inmates in Private and Multi-jurisdiction Jails.

(3) The agency form number and the applicable component of the Department sponsoring the collection. Forms: CJ–9 and CJ–9A. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will asked to respond, as well as a brief abstract: Primary: Local jail administrators. The Deaths in Custody, 2000 collections will assess the number of inmate deaths that occur while in law enforcement custody. This collection will provide the only source of this essential information at the national level. The data providers for this collection are confinement facilities usually administered by local law enforcement agencies.

(5) An estimate of the total number of responses and the amount of the time estimated for an average response: 3,083 respondents each taking an average 30 minutes to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,541 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Ave. NW, National Place Building, Washington, DC 20530.

Dated: January 23, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–2508 Filed 1–29–01; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Generic Survey Clearance of the EHR Impact Database

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by April 2, 2001 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: EHR Impact Database; Generic Clearance.

OMB Approval Number: 3145–0136.

Expiration Date of Approval: September 30, 2001.

Proposed Renewal Project: The EHR Impact Database was established in 1995 to integrate all available information pertaining to the NSF's Education and Training portfolio. Under a generic survey clearance (OMB 3145–0136) data from the NSF administrative database are incorporated and additional information is obtained through initiative-divisional-, and program-specific data collections.

Use of the Information: This information is required for effective administration, program monitoring and evaluation, and for measuring attainment of NSF's program goals, as required by the Government Performance and Results Act (GPRA).

Burden on the Public: The total estimate for this collection is 50,000 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance. The average annual reporting burden is between 2 and 50 hours per 'respondent' who may be an individual or a project site representing groups.

Dated: January 24, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–2499 Filed 1–29–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 AND 20–311]

PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses (FOLs) Nos. DPR–70 and DPR–75, issued to PSEG Nuclear LLC (the licensee), for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), located in Salem County, New Jersey.

The proposed amendment would change the FOLs and Technical Specifications for Salem to reflect an increase in the licensed core power level to 3459 megawatts (thermal), 1.4% greater than the current level.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 1, 2001, 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, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be

entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 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 Mr. Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 10, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 23rd day of January 2001.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–2539 Filed 1–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting Concerning The Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Public Meeting.

SUMMARY: NRC will hold a public meeting at the NRC Headquarters location at 11555 Rockville Pike, in Rockville, MD to provide the public, those regulated by the NRC, and other stakeholders with information about, and an opportunity to provide views on, how NRC plans to revise its oversight program for nuclear fuel cycle facilities. This meeting follows the December 20, 2000 briefing to the Commission by NRC staff and external stakeholders on this subject. Presentations and other documents provided at each meeting are placed on the NRC INTERNET web page (http://www.nrc.gov).

Similar to the revision of the oversight program for commercial nuclear power reactor plants, NRC initiated an effort to improve its oversight program for nuclear fuel cycle facilities. This effort is described in SECY–99–188, ''Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Safety Inspection Program,'' and in SECY–00–0222, ''Status of Nuclear Fuel Cycle Facility Oversight Program Revision.'' SECY–99–188 and SECY–00–0222 are available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose of Meeting: To obtain stakeholder views for improving the NRC oversight program for ensuring fuel cycle licensees and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for special nuclear material and classified matter in the interest of national security. The oversight program applies to commercial nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6 production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, and environment. Also, some of the facilities possess information and material important to national security. In revising the oversight program, the goal is to have an oversight program that: (1) Provides earlier and more objective indications of facility performance in the areas of safety and national security, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. To achieve this goal, the NRC desires the revised oversight program to be more risk-informed and performance-based.

The public meeting will focus on the next actions and schedule in the project to revise the oversight program. A final draft project work plan has been posted on the NRC Technical Conference website at *http://techconf.llnl.gov/cgi-*

bin/topics. This work plan will be the main agenda item.

DATES: Members of the public, industry, and other stakeholders are invited to attend and participate in the meeting, which is scheduled for 10:00 a.m. to 1:00 p.m. on Thursday, February 8, 2001. The meeting will be held in the One White Flint North building in conference room O–16B4.

ADDRESSES: NRC Headquarters, 11555 Rockville Pike, in Rockville, MD. Visitor parking around NRC Headquarters is limited; however, the public meeting site may be reached by taking the Washington DC area metro to White Flint. NRC Headquarters is located across the street from the White Flint metro station.

FOR FURTHER INFORMATION, CONTACT: Patrick Castleman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8118, e-mail *pic@nrc.gov.*

Dated at Rockville, Maryland this 23 day of January 2001.

For the Nuclear Regulatory Commission.

Patrick Castleman,

Project Manager, Inspection Section, Safety and Safeguards Support Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 01–2538 Filed 1–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Planning and Procedures; Revised

The ACRS Subcommittee meeting on Planning and Procedures scheduled to start at 1:00 p.m. on January 31, 2001, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland *has been changed to start at 10:00 a.m.* Notice of this meeting was published in the **Federal Register** on Thursday, December 28, 2000 (65 FR 82410). 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. (EST).

Dated: January 23, 2001.

James E. Lyons,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–2536 Filed 1–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 20, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss proprietary information per 5 U.S.C. 552b(c)(4) pertinent to the Electric Power Research Institute.

The agenda for the subject meeting shall be as follows:

Tuesday, February 20, 2001—8:30 a.m. until the conclusion of business

The Subcommittee will (1) continue its review of the Electric Power Research Institute RETRAN–3D thermal-hydraulic transient analysis code, and (2) discuss the status of the NRC staff's pending reviews of industry thermal-hydraulic codes. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Electric Power Research Institute, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Date: January 24, 2001.

James E. Lyons,

Associate Director for Technical Support.

[FR Doc. 01–2537 Filed 1–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 29, February 5, 12, 19, 26, March 5, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 29, 2001

Tuesday, January 30, 2001

9:30 a.m.—Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Wednesday, January 31, 2001

9:25 a.m.—Affirmation Session (Public Meeting) (Tentative)

a: Fansteel, Inc. (Muskogee, Oklahoma Site); Parties' Joint Motion to Dismiss Fansteel, Inc.'s Appeal of the Presiding Officer's Decision to Grant a Hearing

b: HYDRO RESOURCES, INC. Commission Review of LBP–99–40 (Presiding Officer decision holding proceeding in abeyance); Commission Review of last half of LBP–99–30 (Presiding Officer decision on NEPA/Environmental Justice)

9:30 a.m.—Briefing on Status of OCIO Programs, Performance, and Plans (Public Meeting) (Contact: Donnie Grimsley, 301–415–8702)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Thursday, February 1, 2001

9:30 a.m.—Briefing on Status of OCFO Programs, Performance and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of February 5, 2001—Tentative

Monday, February 5, 2001

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

Week of February 12, 2001—Tentative

Wednesday, February 14, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (If needed)

Week of February 19, 2001—Tentative

Tuesday, February 20, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (If needed)
10:30 a.m.—Briefing on Spent Fuel Pool Accident Risk at Decommissioning Plants and Rulemaking Initiatives (Public Meeting) (Contact: George Hubbard, 301–415–2870)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of February 26, 2001—Tentative

Monday, February 26, 2001

2:00 p.m.—Meeting with the National Association of Regulatory Utility Commissioners (NARUC) (Public Meeting) (Contact: Spiros Droggitis, 301–415–2367)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Tuesday, February 27, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (If needed)
10:30 a.m.—Briefing on Threat Environment Assessment (Closed-Ex. 1)

Week of March 5, 2001—Tentative

There are no meetings scheduled for the Week of March 5, 2001.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

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, Washington, D.C. 20555 (301–415–1969). 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 dkw@nrc.gov.

Dated: January 25, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–2630 Filed 1–26–01; 10:16 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIME AND DATES: 10:30 a.m., Monday, February 5, 2001; 8:30 a.m., Tuesday, February 6, 2001.

PLACE: San Antonio, Texas, at the Plaza San Antonio Marriott Hotel, 555 South Alamo Street, in Hidalgo Ballroom C.

STATUS: February 5 (Closed); February 6 (Open).

MATTERS TO BE CONSIDERED:

Monday, February 5—10:30 a.m. (Closed)

1. Financial Performance.
2. Fiscal Year 2001 Integrated Financial Plan.
3. Preliminary Annual Performance Plan Targets FY 2002.
4. Workforce Planning and Development.
5. Rate and Classification Matters.
6. Compensation Issues.
7. Personnel Matters.

Tuesday, February 6—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 8–10, 2001.
2. Remarks of the Postmaster General and CEO.
3. Appointment of Members to Board Committees.
4. Fiscal Year 2000 Comprehensive Statement on Postal Operations.
5. Fiscal Year 2001 Operating Budget.
6. Capital Investment Plan.
7. Fiscal Year 2001 Financing Plan.
8. Quarterly Report on Service Performance.
9. Capital Investment.
a. Los Angeles, California, Mar Vista Station.
10. Report on the Southwest Area and Rio Grande District.
11. Tentative Agenda for the March 5–7, 2001, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Deputy Secretary.

[FR Doc. 01–2675 Filed 1–26–01; 1:48 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24834; 812–11900]

Goldman Sachs Trust, et al.; Notice of Application

January 23, 2001.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order 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 APPLICATION: Applicants request an order that would permit certain money market funds to engage in principal transactions in tax-exempt money market instruments with an affiliated dealer.

APPLICANTS: Goldman Sachs Trust (the ''Trust''), Goldman, Sachs & Co., Goldman Sachs Funds Management, L.P. (''GSFM''), and Goldman Sachs Asset Management International (''GSAMI'').

FILING DATES: The application was filed on December 21, 1999 and amended on May 24, 2000, September 1, 2000 and November 14, 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 SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 20, 2001, 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. Person may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609.

APPLICANTS: The Trust, 4900 Sears Tower, Chicago, Illinois 60606–6303; Goldman, Sachs & Co., 85 Broad St., New York, NY 10004; GSFM, 32 Old Slip, New York, NY 10005; GSAMI, Procession House, 55 Ludgate Hill, London EC4A AM7JW, England.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, 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 SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Goldman, Sachs & Co. is a New York limited partnership registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act''), and as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').[1] GSFM is a Delaware limited partnership registered as an investment adviser under the Advisers Act and GSAMI is a United Kingdom corporation registered as an investment adviser under the Advisers Act. Goldman, Sachs & Co., in its capacity as a dealer in securities and financial instruments, is referred to as ''Goldman Sachs'' or the ''Dealer.'' Goldman, Sachs & Co., acting through a business unit of its Investment Management Division (Goldman Sachs Asset Management (''GSAM'')), GSFM and GSAMI are individually referred to as an ''Adviser'' and collectively as the ''Advisers.''[2]

2. The Trust is a Delaware business trust and is registered under the Act as an open-end management investment company. For purposes of the application, a ''Money Market Series'' is a separate series of the Trust that is a money market fund (as that term is defined in rule 2a–7(b) under the Act) that is permitted to invest in Municipal Instruments. ''Municipal Instruments'' are short-term tax-exempt money market securities, including tax-exempt securities that qualify for purchase by a money market fund under rule 2a–7 due to the existence of a floating rate of interest or a demand feature. The requested relief would permit each existing or future Money Market Series of the Trust,[3] and other registered investment company or separate series thereof that is a money market fund for which any one of the Advisers may, in the future, serve as investment adviser or subadviser (the ''Future Funds,'' and collectively with the Money Market Series of the Trust, the ''Funds'') to engage in purchases and sales of Municipal Instruments with Goldman Sachs.[4]

3. The investment objective of each Money Market Series is a maximize current income, to the extent consistent with the preservation of capital and the maintenance of liquidity. The Tax-Free Money Market Fund, Tax-Exempt Diversified Portfolio, Tax-Exempt California Portfolio and Tax-Exempt New York Portfolio seek income excluded from gross income for federal income tax purposes, and in the case of the Tax-Exempt California Portfolio and Tax-Exempt California Portfolio and Tax-Exempt New York Portfolio, exempt from California State and New York State and City personal income taxes, respectively.

4. Each Fund values its portfolio by using the amortized cost method of valuation in reliance on rule 2a–7 under the Act. Each of the existing Funds has an investment advisory agreement with Goldman, Sachs & Co., pursuant to which Goldman, Sachs & Co. provides investment advisory and management services through its operating division GSAM, and a distribution agreement with Goldman, Sachs & Co., pursuant to which Goldman, Sachs & Co. serves as distributor for shares of the Funds. Currently, neither GSFM nor GSAMI acts as investment adviser to a Fund.[5]

5. Goldman, Sachs & Co., GSFM and GSAMI are directly or indirectly partnership or corporate subsidiaries of The Goldman Sachs Group, Inc. (''GS Group''), a Delaware corporation. GS Group is the general partner and a limited partner of Goldman, Sachs & Co. The other general partner of Goldman, Sachs & Co., Goldman, Sachs & Co. L.L.C., is a limited liability company whose membership interests are held solely by GS Group. GSFM is a Delaware limited partnership of which the general partner is a corporation wholly-owned directly by GS Group and the sole limited partner is GS Group. GSAMI is an English company wholly-owned indirectly by GS Group. The Advisers maintain offices that are physically separate form those of the Dealer.

6. The investment advisory operations for the Funds are handled by a group currently consisting of 12 persons (the ''Money market Trading Desk'') within GSAM. The personnel assigned to the Money Market Trading Desk are exclusively devoted to the business and affairs of GSAM. Subject to the supervision of the Board of Trustees (the ''Trustees'') of the Funds, the executive management of GSAM, the Investment Policy Committee (discussed below) and the Credit Department (discussed below), all portfolio selection and trading decisions made for the Funds are made by personnel assigned to the Money Market Trading Desk. All portfolio managers responsible for the Funds are assigned to the Money Market Trading Desk.

7. Personnel on the Money Market Trading Desk are not responsible for the marketing or sale of Fund shares or other Goldman, Sach & Co. products, although from time to time they participate in meetings with significant potential clients and may provide other client services. Because of their expertise in and knowledge of the markets for short-term money market instruments, other Goldman, Sachs & Co. personnel, may, from time to time, solicit their views on the viability (from the portfolio management perspective) of proposals for pooled investment vehicles involving such markets or instruments. Finally, Money Market Trading Desk personnel, who are generally familiar with instruments structured to satisfy various provisions

[1] The relief would also apply to any successors to all or substantially all of the business, assets or property of Goldman, Sachs & Co. Any such succession shall be solely by way of change of organization, such as incorporation, reincorporation or reorganization as a public company, partnership, limited liability company or business trust, whether publicly traded or privately held.

[2] As used in the application, the term ''Advisers'' also includes any other division of, or other person controlled by, controlling or under common control with, Goldman, Sachs & Co. that is engaged in providing advisory services, now or in the future, to the Trust or to any other Fund, as defined below, subject to the terms and conditions of the order.

[3] Currently, the Money Market Series of the Trust are the Prime Obligations Portfolio, Money Market Portfolio, Tax-Exempt Diversified Portfolio, Tax-Exempt California Portfolio and Tax Exempt New York Portfolio (the ''ILA Funds''), which are five of the Goldman Sachs-Institutional Liquid Assets Portfolios (''ILA'') and Prime Obligations Fund, Money Market Fund and Tax-Free Money Market Fund (the ''FST Funds''), which are three of the Financial Square Funds (''FTS'').

The Prime Obligations Portfolio, Money Market Portfolio, Prime Obligations Fund and Money Market Fund are taxable money market funds. In 1994 a Commission order was issued permitting these Funds to engage in principal transaction in taxable money market instruments with Goldman Sachs. Institutional Liquid Assets, Investment Company Act Release Nos. 20653 (Oct. 25, 1994) (notice) and 20733 (Nov. 23, 1994) (order). While none of these Funds currently invests in Municipal Instruments, each has the investment flexibility to do so under its investment objectives and policies.

[4] All registered investment companies that currently intend to rely on the order are named as applicants. Any of the Future Funds that rely on the order will comply with the terms and conditions of the order.

[5] GSFM and GSAMI are included as applicants because either or both may act in the future as investment adviser to a Fund.

of rule 2a–7, may also be solicited from time to time by various dealers, including Goldman Sachs, for their views on the structure of new instruments designed to be eligible under rule 2a–7.

8. Credit analysis for the Money Market Trading Desk, Goldman, Sachs & Co. and other affiliates of GS Group is performed by the Credit Department. The Credit Department is a central department of Goldman, Sachs & Co. which analyzes securities credit, counterparty risk, customer credit and related issues. The Credit Department maintains a list of eligible instruments which is used by the Money Market Trading Desk for portfolio management. The Money Market Trading Desk is not authorized to purchase instruments that are not on this list.

9. In general, the Money Market Trading Desk develops and implements portfolio investment strategies within a preselected average maturity range. The average maturity range is selected in weekly meetings of the Investment Policy Committee (the ''Committee''). The Committee determines the target average maturity range based on (1) fundamental economic analysis and technical market data; (2) anticipated trends in monetary and fiscal policy; and (3) anticipated customer activity. In connection with (1) and (2), personnel of the Money Market Trading Desk solicit views of dealers, including Goldman Sachs, on economic and market developments. For example, such personnel routinely canvas dealers, including Goldman Sachs, to determine the ''market'' consensus regarding pending economic data releases, anticipated changes in Federal Reserve policy, and the forecast for gross supply of money market securities available for investment.[6]

10. The Committee is not involved in review or approval of specific securities to be purchased, the terms of any transactions or the types of securities in which the Funds may invest. The Committee is currently composed of 10 GSAM employees (including personnel of the Money Market Trading Desk, but no other portfolio management personnel) and one employee from the Investment Research Division of Goldman, Sachs & Co. The Goldman, Sachs & Co. employee's input into the process is limited to participation in the Committee's deliberations on economic policy outlook, as it pertains to the very narrow issues for which the Committee is responsible. Security and sector selection remain the exclusive responsibility of the portfolio managers, subject of the Funds' prospectus and credit guidelines, and are entirely outside the Committee process. The Committee's decisions on average maturity ranges are made by consensus, and no member has a veto over the decisions made by the Committee. Once a decision is made, the Money Market Trading Desk implements the decision, managing each Fund's average maturity range until the Committee's decision is modified at a subsequent meeting of the Committee.

11. Neither GSFM nor GSAMI currently manages any U.S. registered money market funds. As a result, neither has established a unit corresponding to the Money Market Trading Desk or to the Committee. It has not been determined whether, if GSFM or GSAMI were to manage a Fund, either would establish such a unit, or alternatively whether GSFM and/or GSAMI would rely in whole or in part on GSAM's Money Market Trading Desk and Committee. In any event, any counterpart of the Money Market Trading Desk or the Committee established by either GSFM or GSAMI would conform in all material respects to the description set forth in the application and would comply with all of the conditions to the order.

12. Applicants state that the operators of the Advisers, on the one hand, and those of the Dealer, on the other hand, are independent of each other. Condition 6 below describes certain elements of this independence and is designed to ensure that the Advisers and the Dealer continue to operate independently.

13. Municipal Instruments are commonly referred to as ''tax-exempt money market instruments'' and are traded in the ''tax-exempt money market.'' Applicants state that the tax-exempt money market is generally characterized by: (a) Obligors or guarantors having high credit ratings and, accordingly, relatively low risk of principal losses due to credit events; (b) trading in over-the-counter markets, consisting of dealer firms that are primarily major securities firms or large banks; (c) trading costs to the portfolio primarily consisting of dealer or underwriter spreads, typically not greater than 12.5 basis points (0.125%), but subject to variations based on the type of instrument or the occurrence of turbulent market conditions; (d) an elaborate telephone communication network to match buyers with sellers, which generally precludes being able to obtain a single market price for a given instrument at any given time; and (e) varying price, volatility, liquidity and availability for each type of instrument within the market.

14. Applicants state that recent growth in tax-exempt money market fund assets and withdrawals by several major dealers from making markets in Municipal Instruments have contributed to the limited availability of Municipal Instruments to money market funds that are authorized to purchase Municipal Instruments. Applicants assert that, over the past ten years, the growth in money market funds that purchase Municipal Instruments has substantially outpaced the growth in Municipal Instruments.

15. Applicants state that Goldman Sachs has remained committed to the tax-exempt market, and has moved to fill the void left by departing dealers. As the number of dealers with which the Funds can transact business has decreased, it has become even more important for the Funds to have meaningful access to all of the major dealers in Municipal Instruments in order to diversify each Fund's portfolio, to maintain portfolio liquidity, and to increase opportunities for obtaining best price and execution with respect to portfolio trades.

16. Applicants state that, for the most part, Municipal Instruments consist of conventional municipal notes (''conventional notes''), tax-exempt commercial paper, variable rate demand notes, put bonds and flexible notes. Applicants state that there is no comprehensive information published as to the dollar amount and volume of secondary market transactions executed in Municipal Instruments. However, Goldman Sachs believes that it is generally one of the top secondary market dealers in Municipal Instruments, and leads the distribution of outstanding tax-exempt commercial paper and remarketing of flexible notes. Based upon Goldman Sachs estimates, Goldman Sachs was responsible for 21% of the trading volume in variable rate demand notes, tax-exempt commercial paper and put bonds among Goldman Sachs and seven other leading dealers as of March, 2000. This estimate includes 16% of the trading volume in variable rate demand notes, 37% for tax-exempt commercial paper, and 12% for put bonds.[7] The broker-dealer operations at Goldman Sachs are handled by its Fixed Income, Currency & Commodities Division.

[6] GSAM may also consult regarding municipal securities with Goldman Sachs business groups that conduct brokerage and advisory services for private clients (collectively; ''PCS'').

[7] Flexible notes are aggregated in variable rate demand notes, put bonds and commercial paper in these statistics.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(30 defines an affiliated person of another person to include, if such other person is an investment company, any investment adviser of the company. Applicants state that Goldman, Sachs & Co., as investment adviser to the Funds, is an affiliated person of the Funds.[8] Goldman Sachs is thus prohibited from engaging in principal transactions with the Funds.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and 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.

3. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the transaction, including the consideration to be paid or received, 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, as recited in its registration statement and reports filed under the Act, and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants state that the Funds are major buyers and sellers in the tax-exempt money market with a strong need for access to large quantities of high quality Municipal Instruments. The applicants believe that having access to a major dealer, such as Goldman Sachs, would increase the Funds' ability to obtain suitable portfolio securities. The applicants also submit that the protective conditions set forth below will prevent any overreaching on the part of any person that could act to the detriment of a Fund and will ensure that each transaction is effected on a basis that is reasonable and fair to the Fund and its shareholders. The applicants also believe that the proposed exemption is necessary and appropriate in the public interest and consistent with the protection of investors, consistent with the polices of each Fund, and consistent with purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates. Principal purchase or sale transactions will be conducted only in Municipal Instruments that are First Tier Securities as defined in rule 2a–7(a)(12)(i) under the Act. Notwithstanding the foregoing, if a Fund purchases a Municipal Instrument meeting the above requirements from the Dealer and, subsequent to such purchase the security becomes no longer an ''Eligible Security,'' the Fund may sell the security to the Dealer in a manner consistent with the requirements of rule 2a–7(c)(6)(i)(B). The exemption shall not apply to any purchase or sale of any security issued by Goldman Sachs or any affiliated person thereof or to any security subject to a Demand Feature or Guarantee, as defined in rule 2a–7, issued by Goldman Sachs or any affiliated person thereof. For purposes of this requirement, Goldman Sachs will not be considered to be the issuer of a Demand Feature or Guarantee solely by reason of serving as a remarketing agent for a Municipal Instrument.

2. A determination will be made with respect to each principal transaction conducted by a Fund pursuant to the order, based upon the information reasonably available to the Funds and the Advisers, that the price available from Goldman Sachs is at least as favorable to the Fund as the prices obtained from two other dealer bids in connection with securities falling within the same category of instrument, quality and maturity (but not necessarily the identical security or issuer) (''price test''). In the case of variable rate demand notes, for which dealer bids are not ordinarily available, the Fund will only undertake purchases and sales where the rate of interest to be earned from the variable rate demand note is at least equal to that of variable rate demands notes of comparable quality that are available from other dealers. GS Group will not have any involvement with respect to proposed transactions between the Funds and the Advisers and will not attempt to influence or control in any way the placing by the Funds or the Advisers of orders with Goldman Sachs.

3. Before any principal transaction may be conducted pursuant to the order, the Funds or the Advisers must obtain such information as they deem reasonably necessary to determine that the price test has been satisfied. In the case of each purchase or sale transactions, the Funds or the Advisers must make and document a good faith determination with respect to compliance with the price test based on current price information obtained through the contemporaneous solicitation of bona fide offers in connection with securities falling within the same category of instrument, quality and maturity (but not necessarily the identical security or issuer). With respect to variable rate demand notes, contemporaneous solicitation of a bona fide offer will be construed to mean any bona fide offer solicited during the same trading day. With respect to prospective purchases of securities by a Fund, the dealer firms from which prices are solicited must be those who have securities of the same categories and the type desired in their inventories and who are in a position to quote favorable prices with respect thereto. With respect to the prospective sale of securities by a Fund, these dealer firms must be those who, in the experience of the Funds and the Advisers, are in a position to quote favorable prices.

4. Principal transactions conducted by a tax-exempt Fund pursuant to the order shall be limited to no more than than an aggregate of 20% of the purchases and 20% of the sales of all transactions in Municipal Instruments conducted by that Fund. Principal transactions in Municipal Instruments conducted by a taxable Fund pursuant to the requested order shall be limited to no more than an aggregate of 20% of the purchases and 20% of the sales of all transactions in Municipal Instruments conducted by that Fund. These calculations shall be measured on an annual basis and shall be computed with respect to the dollar volume thereof. For the purposes of these calculations, purchases of Municipal Instruments by a taxable Fund shall also count towards the 25% cumulative limitation for purchases or sales set forth in condition 3 of Institutional Liquid Assets, Investment Company Act Release No. 20653 (Oct. 25, 1994).

5. Goldman Sachs' dealer spread regarding any transaction with the Funds will be no greater than its customary dealer spread on similar (with unaffiliated parties) of a similar

[8] In the case of a Fund advised by an affiliate of Goldman, Sachs & Co., Goldman, Sachs & Co. would be an affiliated person of an affiliated person of the Fund.

size during a comparable time period. Its customary dealer spread also will be consistent with the average or standard spread charged by dealers in money market securities of a similar type and transaction size.

6. The Advisers, on the one hand, and the Dealer, on the other, will operate on different sides of appropriate Chinese Walls with respect to the Funds and the Municipal Instruments. The Chinese Walls will include all of the following characteristics, and such others as may from time to time be considered reasonable by the Dealer and the Advisers to facilitate the factual independence of the Advisers from the Dealer:

(a) Each of the Advisers will maintain offices physically separate from those of the Dealer.

(b) The compensation of persons assigned to any of the Advisers (*i.e.,* executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the Advisers for the Funds with the Dealer under the exemption, exemption, except to the extent that such trades may affect the profits and losses of the GS Group or Goldman, Sachs & Co. as a whole.

(c) The Fixed Income, Currency & Commodities Division of Goldman Sachs will not compensate to Advisers from its profits or losses on such specific transactions with any of the Advisers, *provided* that the allocation of the profits by GS Group to its shareholders and by Goldman, Sachs & Co. to its partners, and the determination of general firm-wide compensation of officers and employees, will be unaffected by this undertaking.

(d) Personnel assigned to the Money Market Trading Desk will be exclusively devoted to the business and affairs of one or more of the Advisers, except for consultations with Goldman Sachs, PCS, and other dealers as discussed in the application. Personnel assigned to the Dealer will not participate in or otherwise seek to influence the Money Market Trading Desk other than in the normal course of sales and dealer activities of the same nature as are simultaneously being carried out with respect to nonaffiliated institutional clients. Each Adviser, on the one hand, and the Dealer, on the other hand, may nonetheless maintain affiliations other than with respect to the Funds, and in addition with respect to the Funds as follows:

(i) GSAM has organized and any other Adviser may organize an Investment Policy Committee the members of which include Money Market Group Trading Desk personnel, other GSAM personnel and respresentatives from the Investment Research Department of the Dealer. The non-GSAM member's input on the Investment Policy Committee will be limited solely to expressions of his or her opinion on interest rate and similar economic matters, and will be included in the Investment Policy Committee only to the extent of considering and ratifying the portfolio managers' average maturity recommendations. The Investment Policy Committee will develop recommendations only on average maturity ranges and will not develop recommendations on specific securities or on types of Securities.

(ii) Money Market Trading Desk personnel may rely on research, including credit analysis and reports prepared by the Goldman, Sachs & Co. Credit Department, which is responsible firmwide for credit analysis and counterparty credit risk evaluations and recommendations.

(iii) Members of the Management Committee of Goldman, Sachs & Co. and GS Group, and certain other senior executives with responsibility for overseeing operations of various division, subsidiaries and affiliates of Goldman, Sachs & Co. are not precluded from exercising those functions over the Advisors because they oversee the Dealers as well, provided that such persons shall not have any involvement with respect to proposed transactions pursuant to the exemption and will not in any way attempt to influence or control the placing by the Funds or any Adviser of orders in respect of Municipal Instruments with Goldman Sachs.

7. The Funds and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemptions as may be necessary to confirm compliance with the conditions to the requested relief. To this end, each Fund shall maintain the following:

(a) An itemized daily record of all purchases and sales of securities pursuant to the exemption, showing for each transaction the following: (i) The name and quantity of securities; (ii) the unit purchase or sale price; and (iii) the time and date of the transaction. For each transaction (other than variable rate demand notes), these records shall documents two quotations received from other dealers for securities falling within the same category of instrument, quality and maturity; including the following: (i) The names of the dealers; (ii) the names of the securities; (iii) the prices quoted; and (iv) the times and dates the quotations were received. In the case of variable rate demand notes, the same records shall be maintained except that the rates of quoted will be substituted for the prices quoted.

(b) Records sufficient to verify compliance with the volume limitations contained on condition (4) above. The Dealer will provide the Funds with all records and information necessary to implement this requirement. The records required by this condition (7) will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1) under the Act.

8. The legal and compliance department of Goldman Sachs and the Advisers will prepare and administer guidelines for personnel of Goldman Sachs and the Advisers to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the order and that the parties generally maintain arm's-length relationships. In the training of Goldman Sachs' personnel, particular emphasis will be placed upon the fact that the Funds are to receive rates as favorable as other institutional purchasers buying the same quantities. The legal and compliance departments will periodically monitor the activities of Goldman Sachs and the Advisers to make certain that the conditions set forth in the order are adhered to.

9. The non-interested Trustees of the Funds will approve, periodically review, and update as necessary, guidelines for the Funds and the Advisers that are reasonably designed to make certain that the transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective non-interested Trustees will periodically monitor the activities of the Funds and the Advisers in this regard to ensure that these goals are being accomplished.

10. The Trustees of the Trust, including a majority of the non-interested Trustees, will have approved the Fund's participation in transaction conducted pursuant to the exemption and determined that such participation by the Fund is the best interests of the Funds and its shareholders. The minutes of the meeting of the Board of Trustees at which this approval was given must reflect in detail the reasons for the Trustee's determination. The Trustees will review no less frequently than annually the Fund's participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Fund's participation in such transaction continues to be in the best interests of the Fund and its shareholders. Such

review will include (but not be limited) (a) a comparison of the volume of transactions in each type of security conducted pursuant to the exemption to the market presence of the Dealer in the Market for that type of security, which market data may be based on good faith estimates to the extent that current formal data is not reasonably available, and (b) a determination that the Funds are maintaining appropriate trading relationships with other sources for each type of security, to ensure that there are appropriate sources for the quotations required by condition 3. The minutes of the meetings of the Trustees of the Trust at which these determinations are made will reflect in detail the reasons for the Trustees' determinations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43867; File No. SR–CBOE–01–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a Four Month Extension to the Pilot Program to Eliminate Position and Exercise Limits for SPX, OEX, and DJX Options, and FLEX Options Overlying These Indexes

January 22, 2001.

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 January 18, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' 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. The proposed rule change has been filed by the CBOE as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE seeks a four month extension of the pilot program that provides for the elimination of position and exercise limits for the S&P 500 Index (''SPX''), S&P 100 Index (''OEX''), and Dow Jones Industrial Average (''DJX'') index options as well as for FLEX options overlying these indexes. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

On January 22, 1999, the Commission approved a two-year pilot program (''Pilot Program'') that allowed for the elimination of position and exercise limits for options on the OEX, SPX, DJX as well as for FLEX options overlying these indexes.[4] The purpose of this proposed rule change is to request a fourth-month extension of the Pilot Program.[5]

The Approval Order required the Exchange to submit a report to the Commission on the status of the Pilot Program so that the Commission could use this information to evaluate any consequences of the program and to determine whether to approve the elimination of position and exercise limits for these products on a permanent basis.[6] The CBOE submitted the required report to the Commission on December 21, 2000.[7] The report indicates that during the review period, CBOE did not discover any instances where an account maintained an unusually large unhedged position. The data from the report found that only 12 accounts established positions in excess of 10% of the standard limit applicable to each index at the time the Pilot Program was approved. These positions were all in SPX and most were established by firms and market makers. All of the accounts were hedged, although to different degrees. Most important, CBOE's analysis did not discover any aberrations caused by large unhedged positions during the life of the Pilot Program. For this reason, the Exchange believes that its experience with the Pilot Program has been positive. Accordingly, CBOE requests that the effectiveness of the Pilot Program be extended four months.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[8] of the Act in general and furthers the objectives of Section 6(b)(5)[9] in particular in that is it designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by allowing for the extension of a Pilot Program that has enable more business to be transacted on the exchanges that might otherwise have been transacted in the over the counter (''OTC'') market without the benefit of Exchange transparency and the guarantee of The Options Clearing Corporation. The Exchange also believes that the proposed rule change is consistent with section 11A of the Act[10] in that it will enhance competition by allowing the Exchange to compete better with the OTC market in options and with entities not subject to position limit rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition that is not

[4] *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 4 FR 49111 (February 1, 1999) (approving SR–CBOE–99–23). (''Approval Order'')

[5] By separate filing, CBOE requests permanent approval of the Pilot Program.

[6] In the Approval Order, the Commission stated: ''CBOE will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Commission expects the CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.''

[7] Letter from Patricia L. Cerny, Director, Office of Trading Practices, CBOE, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), SEC, dated December 21, 2000.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C 78k–1.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder[12] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.[13] At any time 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 the furtherance of the purposes of the Act.[14]

The Exchange has requested that the rule change be accelerated to become operative on January 22, 2001, because such action will allow the Exchange to continue the Pilot Program without interruption while the Commission determines whether to approve the Pilot Program on a permanent basis. The Commission finds that accelerating the operative date of the rule change to prevent interruption of the Pilot Program is consistent with the protection of investors and the public interest, and thus designates January 22, 2001 as the operative date of this filing.

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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–01–01 and should be submitted by February 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A)

[12] 17 CFR 240.19b–4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The Commission has determined to waive the requirement that CBOE provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. Telephone conversation between Patricia Cerny, Office of Trading Practices, CBOE, and Sharon L. Lawson, Senior Special Counsel, Division, SEC, on January 12, 2001.

[14] 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43876; File No. SR–NASD–01–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish Minimum Quotation Increment for Securities Quoting in Decimals

January 23, 2001

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 January 22, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4613, ''Character of Quotations,'' to adopt a $0.01 minimum quotation increment for Nasdaq securities as previously agreed to as part of the Decimals Implementation Plan for the Equities and Options Markets (''Implementation Plan'' or ''Plan'') submitted to the Commission on July 24, 2000. Because this proposal simply implements the terms and conditions of the Implementation Plan, Nasdaq has designated this proposal as non-controversial, rendering it effective upon filing with the Commission. Nasdaq asks that the Commission waive the 30-day operative waiting period pursuant to SEC Rule 19b–4(f)(6)(iii).[6] Nasdaq will implement this rule change on March 12, 2001. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

4613. Character of Quotations

(a) Two-Sided Quotations

(1) No Change.
(A) No Change.
(B) No Change.
(C) No Change.
(D) Minimum Price Variation for Decimal-based Quotations

The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01. Quotations failing to meet this standard shall be rejected.

(2) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked, and the Commission agreed, to waive the 5-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] 17 CFR 240.19b–4(f)(6)(iii).

statements may be examined at the places specified in Item IV below. Nasdaq 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

On July 25, 2000, the NASD, jointly with self-regulatory organizations, submitted to the Commission the Implementation Plan. As part of the Plan, the NASD committed to establish a minimum quotation increment of $0.01 for Nasdaq securities trading in decimals. That is, Nasdaq would display and disseminate quotations in securities trading in decimal-based increments to two places beyond the decimal point (to the penny). This proposed rule change establishes the $0.01 minimum quote increment for Nasdaq securities that transition from fractional to decimal pricing. The filing also informs market participants that decimal quotations submitted to Nasdaq that do not comport with the penny minimum quotation increment standard will be rejected by Nasdaq systems. Nasdaq intends to impose the $0.01 minimum decimal quotation increment, pursuant to the Plan's phase-in schedule, beginning March 12, 2001, on every Nasdaq security that becomes authorized for decimal trading pursuant to the Plan.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time 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.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to waive the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to begin quoting securities in penny increments pursuant to the Implementation Plan, which is part of the industry-wide conversion to decimal pricing. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 NASD. All submissions should refer to file number SR–NASD–01–07 and should be submitted by February 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–2506 Filed 1–29–01; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43866; File No. SR–Phlx–01–01]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Dissemination of Options Quotations With Size

January 22, 2001.

I. Introduction

On January 8, 2001, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') 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 thereunder,[2] a proposed rule change seeking to amend Exchange Options Floor Procedure Advice (''OFPA'') F–7, Bids and Offers, to state that the size of any bid or offer in a quotation disseminated by the Exchange shall be equal to the AUTO–X guarantee for the quoted option and shall be firm, except that the disseminated size of bids and offers of customer limit orders shall be ten contracts and shall be firm, regardless of the actual size of such orders. Notice of the proposed rule change appeared in the **Federal Register** on January 18, 2001.[3] The Commission received no comments on the proposal. This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43822 (January 8, 2001), 66 FR 4884.

approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to codify its initial program for the dissemination of options quotations with size. The Exchange anticipates that, on or about January 22, 2001, the Options Price Reporting Authority (''OPRA'') will begin to support the dissemination of options quotations that include the size, or the number of contracts, represented in disseminated bids and offers on the Exchange.

Although, the Phlx anticipates that OPRA will have the necessary systems capacity to accept and disseminate quotations with size by late January 2001, and that one or more options exchanges will be in a position to disseminate *actual* quotation size at the time, the Phlx will not have completed its application of the systems changes necessary to permit it to disseminate actual quotation size for a number of months.

Therefore, until the Exchange's systems disseminate actual quotation size on a quote-by-quote basis, the Phlx proposes to establish by rule and periodically publish,[4] on its web site and through regulatory circulars to Exchange members and member organizations, the quotation size for which its members' quotations are firm as required by Rule 11Ac1–1(d)(1)(i) under the Act.[5]

In addition, the Exchange proposes to voluntarily disseminate to OPRA the applicable automatic execution size guarantee for each quoted option, except that with respect to customer limit orders the Phlx would disseminate a size of 10 contracts, regardless of the actual size of the customer order. In all cases, the Phlx would be firm for its disseminated quotation size (without regard to whether the given order would be eligible for automatic execution via the Exchange's automatic execution feature, AUTO–X).[6]

Until the Phlx has completed its application of the systems changes necessary to automatically update its quotation size on a continuous basis, the Phlx believes that the instant proposal represents a vast improvement over the current system, by increasing transparency and providing the market place with considerably more information upon which to base order routing decisions.

Finally, the Phlx expects to begin providing quotations with actual size on a floor-wide basis within one year. The Exchange represents that it will undertake to submit a further proposed rule change when the Exchange is able to disseminate actual size associated with its options quotes and customer limit orders.

The Exchange represents that the instant proposed rule change does not affect in any respect the Exchange's obligations concerning non-public customer orders.[7] Further, the Exchange represents that prior to the April 1, 2001 mandatory compliance date of the amended Quote Rule, the Exchange will establish firm quote requirements with respect to orders received from broker-dealers, as required by the amended Quote Rule.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[8] that the rules of an exchange be designed to facilitate transactions in securities, promote just and equitable principals of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.[9] The Commission believes that the proposal should help to increase transparency by providing more information to investors in a readily accessible manner. In addition, the proposal should help to increase investor confidence in transactions on the Exchange by providing greater certainty to investors by ensuring that quotes made by market participants are firm for a specified number of contracts for customer orders.

The Commission believes that the Exchange's proposal to establish by rule and periodically publish the size for their best bid and offer in each options series that it listed on the Exchange is consistent with the amendments to the Quote Rule provided that the Exchange establish firm quote requirements for orders received from broker-dealers prior to April 1, 2001. The Commission notes that the Exchange represents that is will periodically publish on its web site and through regulatory circulars to Exchange members and member organizations the size for which its members' quotations must be firm. Further, the Commission notes that the Exchange intends to provide quotations with actual size on a floor-wide basis within one year.

Finally, the Commission, pursuant to section 19(b)(2) of the Act,[10] finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Exchange anticipates the OPRA may begin to support the dissemination of quotes with size as soon as January 22, 2001. The Commission believes that granting accelerated approval to this proposal should allow investors to receive more information as soon as that information can be made available through the OPRA system. Accordingly, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,[11] to approve the proposal on an accelerated basis.

IV. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–01–01) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–2504 Filed 1–29–01; 8:45 am]

BILLING CODE 8010–01–M

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[4] On November 17, 2000, the Commission amended Rule 11Ac1–1 (''Quote Rule'') under the Act to require options exchanges and options market makers to publish firm quotes. The compliance date for the amended Quote Rule is April 1, 2001. *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

[5] Rule 11Ac1–1(d)(1)(i) under the Act, 17 CFR 240.11Ac1–1(d)(1)(i). To accommodate the fact that the options markets did not yet disseminate quotes with size, the Commission provided an alternative to the Quote Rule, as applied in the equity markets, which allows options markets to establish by rule and periodically publish the size for which their quotations will be firm.

[6] In the event that certain Phlx specialist firms are able to develop and implement proprietary systems (called ''Specialized Quote Feeds'' or ''SQFs'') that are able to disseminate actual size prior to the Exchange's systems disseminating quotations with actual size on a floor-wide basis, the Phlx would undertake to file a further proposed rule change with the Commission requesting approval to disseminate actual size for those options classes assigned to such specialist firms.

[7] *See* Phlx Rule 1015(b) and Options Floor Procedure Advice A–11.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3317]

State of Texas; Declaration of Disaster (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated January 15, 2001, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on December 12, 2000 and continuing through January 15, 2001.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is March 9, 2001 and for economic injury the deadline is October 9, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 19, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–2510 Filed 1–29–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Washington, D.C. District Advisory Council; Public Meeting

The U.S. Small Business Administration Washington, D.C. District Advisory Council, located in the metropolitan area of Washington, DC, will hold a public meeting from 9 a.m.—11 a.m., Thursday, February 1, 2001, at Creative Associates, Inc., 5301 Wisconsin Avenue, NW., Suite 700, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anita L. Irving, Public Information Officer, U.S. Small Business Administration, 1110 Vermont Avenue, NW., Suite 900, (P.O. Box 34500), Washington, DC 20043–4500; telephone 202–606–4000, ext. 275.

Sandra Mont,

Program Analyst.

[FR Doc. 01–2582 Filed 1–29–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3543]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2) (1996), the Secretary of State announces a meeting of the Arms Control and Nonproliferation Advisory Board (ACNAB) to take place February 1–2, 2001, at the Department of State, Washington, DC.

Pursuant to section 10 (d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10 (d) (1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that this Board meeting will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The Board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention.

For more information concerning the meetings, please contact Avis T. Bohlen, Assistant Secretary, Bureau of Arms Control, at (202) 647–9610.

Dated: January 25, 2001.

Avis T. Bohlen,

Assistant Secretary, Bureau of Arms Control, Department of State.

[FR Doc. 01–2653 Filed 1–26–01; 2:34 pm]

BILLING CODE 4710–27–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120–XX]

Proposed Advisory Circular on Parts 121, 125, and 135 and Flightcrew Procedures During Taxi Operations

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) for parts 121, 125, and 135 Flightcrew Procedures During Taxi Operations, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC that provides advisory material and recommends safe procedures, standards, and practices relating to taxi operation. This notice is necessary to give all interested persons the opportunity to present their view on the proposed AC.

DATES: Comments must be received on or before March 1, 2001.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Air Transportation Division (Attention AFS–220), 800 Independence Avenue SW., Washington, DC 20591, or electronically to *Clayton.Hewitt@faa.gov.* Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Clay Hewitt, AFS–200, at the address above, by e-mail at Clayton.Hewitt@faa.gov, or telephone at (202) 267–9209.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed AC is available on the FAA Web site at *http://www.faa.gov/avr/afs/acs/ac–idx.htm,* under AC No. 120–XX. A copy of the proposed AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Please identify AC 120–XX, parts 121, 125, and 135 Flightcrew Procedures During Taxi Operations, and submit comments, either hard copy or electronically, to the appropriate address listed above.

Issued in Washington, DC, on January 22, 2001.

L. Nicholas, Lacey.

Director, Flight Standards Service.

[FR Doc. 01–2558 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–07]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 2001.

ADDRESSES: Send comments on any petitions in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No._____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91.

Issued in Washington, DC, on January 25, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29725.
Petitioner: Federal Express Corporation.
Section of the FAR Affected: 14 CFR 121.417(c)(2)(i).
Description of Relief Sought: To provide relief from the requirement for each flight crewmember to perform certain emergency drills and operate certain emergency equipment once every 24 months during recurrent training.

Disposition of Petitions

Docket No.: 27802.
Petitioner: Richmor Aviation, Inc.
Section of the 14 CFR Affected: 14 CFR 21.197(c)(2).
Description of Relief Sought/ Disposition: To permit Richmor to receive a special flight permit with continuing authorization to conduct ferry flights on aircraft with nine or fewer passenger seats.
Denial, 01/10/01, Exemption No. 7419

Docket No.: 29849.
Petitioner: The Boeing Company.
Section of the 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit Boeing to issue export airworthiness approvals for Class II and Class III products manufactured in Japan by Jamco Corporation as an approved supplier to Boeing under Boeing's PC No. 700.
Grant, 01/03/01, Exemption No. 7420

Petition for Exemption

Docket No.: 29725.
Petitioner: Federal Express Corporation.
Regulations Affected: § 121.417(c)(2)(i).
Description of Petition: To provide relief from the requirement for each flight crewmember to perform certain emergency drills and operate certain emergency equipment once every 24 months during recurrent training.

[FR Doc. 01–2557 Filed 1–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33992]

Iowa Railroad Historical Society d/b/a Boone & Scenic Railroad—Acquisition and Operation Exemption—Union Pacific Railroad Company

Iowa Railroad Historical Society (IRHS) [1] d/b/a Boone & Scenic Railroad (BSVY), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31[2] to acquire the right-of-way and operating assets of the Union Pacific Railroad Company (UP) from milepost 42.57 to milepost 44.23, in Boone County, Iowa, a distance of approximately 1.66 route miles.[3]

According to the verified notice of exemption, BSVY will operate the rail line as a ''handling carrier,'' with UP performing all revenue accounting of its line hauls and paying BSVY a division from the revenues collected. The transaction is scheduled to be consummated on or after January 31, 2001.[4]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33992, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fenner Stevenson, P.O. Box 603, Boone, IA 50036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 22, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–2485 Filed 1–29–01; 8:45 am]

BILLING CODE 4915–00–P

[1] IRHS is an operating, nonprofit railroad museum. It currently operates over 11 miles of track carrying approximately 45,000 passengers per year.

[2] The notice appears to invoke the class exemption from 49 U.S.C. 10901 at 49 CFR 1150.31. While the notice cites 49 U.S.C. 10902 rather than 49 U.S.C. 10901, all references in the notice suggest that the transaction is proposed for exemption from the requirements of 49 U.S.C. 10901.

[3] The acquisition will take place by donation contract and a donative quitclaim deed. The right-of-way being acquired by IRHS is the only remaining right-of-way from the old Fort Dodge, Des Moines and Southern Railway (FDDMS). Consummation of this transaction will enable IRHS to complete the acquisition of the remaining FDDMS line.

[4] As part of this transaction, BSVY indicates that it is also requesting to assume the common carrier obligation on the track it now owns between milepost 41.0 and 42.57.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 23, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 1, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0742.
Regulation Project Number: EE–111–80 (TD 8019) Final.
Type of Review: Extension.

Title: Public Inspection of Exempt Organization Returns.

Description: Section 6104(b) authorizes the Internal Revenue Service to make available to the public the returns required to be filed by exempt organizations. The information requested in Treasury Regulations § 301.6104(b)–1(b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 22.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 22 hours.

OMB Number: 1545–1566.

Notice Number: Notice 97–66.

Type of Review: Extension.

Title: Certain Payments Made Pursuant to a Securities Lending Transaction.

Description: Notice 97–66 modifies final regulations which are effective November 14, 1997. The Notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and repurchased transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 377,5000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 61,750 hours.

OMB Number: 1545–1588.

Regulation Project Number: REG–209682–94 (Final).

Type of Review: Extension.

Title: Adjustments Following Sales of Partnership Interests.

Description: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. The proposed regulations require the partnership to attach a statement to its partnership return indicating the adjustment and how it was allocated among the partnership property.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 226,000.

Estimated Burden Hours Per Respondent/Recordkeepers: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 904,000 hours.

Clearance Officer: Garrick Shear. Internal Revenue Service Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–2498 Filed 1–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–213–76]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–213–76 (TD 8095), Estate and Gift Taxes; Qualified Disclaimers of Property (Section 25.2518–2(b)).

DATES: Written comments should be received on or before April 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

OMB Number: 1545–0959.

Regulation Project Number: LR–213–76.

Abstract: Internal Revenue Code section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of 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 start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–2490 Filed 1–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–209–76]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–209–76 (TD 7941), Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A (Section 301.6324A–1).

DATES: Written comments should be received on or before April 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A.

OMB Number: 1545–0757.

Regulation Project Number: LR–209–76.

Abstract: Internal Revenue Code section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6324A(c). This regulation clarifies the procedures for complying with the statutory requirements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 34,600.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 8,650.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of 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 start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–2491 Filed 1–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8038, 8038–G, and 8038–GC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 8038, Information Return for Tax-Exempt Private Activity Bond Issues, 8038–G, Information Return for Tax-Exempt Governmental Obligations, and 8038–GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.

DATES: Written comments should be received on or before April 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Tax-Exempt Private Activity Bond Issues (Form 8038), Information Return for Tax-Exempt Governmental Obligations (Form 8038–G), and Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales (Form 8038–GC).

OMB Number: 1545–0720.

Form Number: 8038, 8038–G, and 8038–GC.

Abstract: Issuers of state or local bonds must comply with certain information reporting requirements contained in Internal Revenue Code section 149 to qualify for tax exemption. The information must be reported by the issuers about bonds issued by them during each preceding calendar quarter. Forms 8038, 8038–G, and 8038–GC are used to provide the IRS with the information required by Code section 149 and to monitor the requirements of Code sections 141 through 150.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments and not-for-profit institutions.

Estimated Number of Respondents: 14,500.

Estimated Time Per Respondent: 17 hr., 39 min.

Estimated Total Annual Burden Hours: 255,871.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of 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 start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 22, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–2492 Filed 1–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1345

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 1345, Handbook for Authorized IRS e-file Providers.

DATES: Written comments should be received on or before April 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the publication should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Publication 1345, Handbook for Authorized IRS e-file Providers.

OMB Number: 1545–1708.

Publication Number: 1345.

Abstract: Publication 1345 informs those who participate in the IRS e-file Program for Individual Income Tax Returns of their obligations to the Internal Revenue Service, taxpayers, and other participants.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 90,000.

Estimated Time Per Respondent: 32 hours, 30 minutes.

Estimated Total Annual Burden Hours: 2,924,627.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of 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 start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–2493 Filed 1–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

January 23, 2001.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Submit written comments on or before March 1, 2001.

OMB Number: 1550–0075.

Form Number: Not applicable.

Type of Review: Regular.

Title: Loans to Executive Officers, Directors and Principal Shareholders of Savings Associations.

Description: The regulation requires savings association to maintain detailed records of their extensions of credit to executive officers, directors, and principal shareholders. The regulation also requires that savings associations report to the OTS all loans to executives and disclose the amount of its extensions of credit following a written request from the public. Indebtedness to correspondent banks must also be disclosed to the board of directors and made available for OTS review during examinations.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 1,084.

Estimated Burden Hours Per Response: 11 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 11,924 hours.

Clearance Officer: Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 01–2507 Filed 1–29–01; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Tuesday,

January 30, 2001

Part II

Federal Housing Finance Board

12 CFR Part 915, et al.

Capital Requirements for Federal Home Loan Banks; Final Rule

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 915, 917, 925, 930, 931, 932, 933, 956, 966

[No. 2000–46]

RIN 3069–AB01

Capital Requirements for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to implement a new capital structure for the Federal Home Loan Banks (Banks), as required by the Gramm-Leach-Bliley Act. The final rule establishes risk-based and leverage capital requirements for the Banks. It also addresses the different classes of stock that a Bank may issue, the rights and preferences that may be associated with each class of stock, and the capital plans that each Bank must submit for Finance Board approval.

EFFECTIVE DATE: The final rule is effective on March 1, 2001.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director and Chief Economist, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991; Ellen Hancock, Senior Financial Analyst, (202) 408–2906; or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Deborah F. Silberman, General Counsel, (202) 408–2570; Neil R. Crowley, Deputy General Counsel, (202) 408–2990; Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930; or Thomas E. Joseph, Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. The Bank System

The twelve Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1423, 1432(a), *as amended*. The Banks are ''government sponsored enterprises'' (GSE), *i.e.*, federally chartered but privately owned institutions created by Congress to support the financing of housing and community lending by their members. *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), (j)(10) (1994). By virtue of their GSE status, the Banks are able to borrow in the capital markets at favorable rates. The Banks then pass along that funding advantage to their members—and ultimately to consumers—by providing advances (secured loans) and other financial services to their members (principally, depository institutions) at rates that the members generally could not obtain elsewhere.

The Banks also are cooperatives, meaning that only their members may own the capital stock and share in the profits of the Banks and only their members, and certain eligible associates (such as state housing finance agencies), may borrow from or use the other products and services provided by the Banks. 12 U.S.C. 1426, 1430(a), 1430b, *as amended*. An institution that is eligible may become a member of a Bank if it satisfies certain statutory criteria and purchases a specified amount of the Bank's capital stock. 12 U.S.C. 1424, 1426 (1994). Together with the Office of Finance, the twelve Banks comprise the Bank System, which operates under the supervision of the Finance Board, an independent agency in the executive branch of the U.S. government. The primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner; consistent with that duty the Finance Board is required to supervise the Banks, ensure that they carry out their housing finance mission, and ensure that they remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A), (B) (1994).

B. Federal Home Loan Bank Capital Structure

Since its enactment in 1932, section 6 of the Bank Act has provided for a ''subscription'' capital structure for the Banks. Under that structure, the amount of capital stock that each Bank issued was determined by a statutory formula that dictated how much Bank stock each member must purchase. In accordance with that formula, each member was required to purchase Bank stock in an amount equal to one percent of the member's total mortgage assets or five percent of the advances outstanding to the member, whichever was greater. A principal shortcoming of the subscription capital structure was that the amount of capital maintained by each Bank bore little relation to the risks inherent in the assets and liabilities of the Bank.

With the enactment of the Gramm-Leach-Bliley Act, Pub. Law No. 106–102, 133 Stat. 1338 (Nov. 12, 1999) (GLB Act), the Congress amended section 6 the Bank Act in its entirety, replacing the subscription capital provisions with risk-based and leverage capital requirements that are similar to those applicable to depository institutions and to the other housing GSEs. The GLB Act mandated that the Finance Board issue regulations prescribing uniform capital standards applicable to each Bank in accordance with the provisions of the GLB Act. When the Finance Board's regulations are implemented, each Bank will be required to maintain permanent capital and total capital in amounts that are sufficient for the Bank to comply with the minimum risk-based and leverage capital requirements, respectively, established by the GLB Act.

The GLB Act requires each Bank to maintain ''permanent capital'' in an amount that is sufficient to meet the credit risk and market risk to which the Bank is subject, with the market risk being based on a stress test established by the Finance Board that tests for changes in certain specified market variables. Permanent capital is defined by statute to include the amounts paid-in for Class B stock plus the retained earnings of the Bank, with retained earnings being determined in accordance with generally accepted accounting principles (GAAP).

The GLB Act also requires each Bank to maintain ''total capital'' in amounts that are sufficient to comply with a minimum leverage requirement. Total capital is defined by the GLB Act to include a Bank's permanent capital, plus the amounts paid-in by the members for Class A stock, any general loss allowance (if consistent with GAAP and not established for specific assets), and other amounts from sources determined by the Finance Board as available to absorb losses. When measured by weighting the amount paid-in for Class B stock and the retained earnings by a factor of 1.5, each Bank must maintain a ratio of total capital to total assets of at least 5 percent. When measured on an unweighted basis, each Bank must maintain a ratio of total capital to total assets of at least 4 percent.

The GLB Act further requires the capital regulations issued by the Finance Board to address a number of other matters, such as the classes of stock that a Bank may issue, the rights, terms, and preferences that may be established for each class, the issuance, transfer, and redemption of Bank stock, and the liquidation of claims against a withdrawing member. The rules must permit each Bank to issue either Class A or Class B stock, or both, with the board of directors of each Bank to determine the rights, terms, and preferences for each class. Both Class A and Class B stock may be issued only to

and held only by members of the Bank, and the regulations are to provide the manner in which the stock may be sold, transferred, redeemed, or repurchased. The rules also must address the manner in which a Bank is to liquidate any claims against its members.

The GLB Act separately establishes a number of other capital-related requirements, which pertain to matters such as the termination of an institution's Bank membership, the ability of a Bank to repurchase excess stock held by a member (*i.e.*, stock that is in excess of the minimum stock investment that each member is required to hold), restrictions on the ability of a Bank to redeem stock when its capital is impaired, restrictions on readmission to membership after withdrawing, and the ownership of the retained earnings by the Class B stockholders.

Within 270 days after the publication of this final capital rule, the GLB Act requires the board of directors of each Bank to submit for Finance Board approval a capital plan that the board determines is best suited for the Bank and its members. Subsequent amendments to an approved capital plan also must be approved in advance by the Finance Board. The GLB Act requires the plan to include certain provisions, requires that it be consistent with the regulations adopted by the Finance Board, and that when implemented it must provide the Bank with sufficient capital to meet both the leverage and risk-based capital requirements. Each plan also must include certain provisions specified by the GLB Act. Those provisions relate to the minimum investment required of each member in order for the Bank to meet its regulatory capital requirements, the effective date of the plan and the length of any transition period, the classes of stock to be offered by the Bank and the rights, terms, and preferences associated with each class, the transferability of the Bank stock, the disposition of Bank stock held by institutions that withdraw from membership, and review of the plan by an independent accountant and a credit ratings agency. Those provisions are the minimum required by the GLB Act; the Finance Board may require that other provisions be included in each plan, and the Banks as well may include other provisions in their plans, provided they are consistent with the Bank Act and the regulations of the Finance Board.

C. Federal Home Loan Bank Stock

Section 6 of the Bank Act, as in effect prior to the GLB Act, authorized the Banks to issue stock, specified the characteristics of the stock, and addressed the manner in which the stock could be issued, transferred, and redeemed. 12 U.S.C. 1426 (1994). Since the establishment of the Bank System in 1932, each of the Banks has been authorized to issue a single class of stock, which could be issued and redeemed only at its statutory par value of $100 per share. An institution becoming a Bank member was required to subscribe for a certain minimum amount of the Bank's stock, for which it was required to pay in full and in cash at the time of its application.[1]

The amount of the initial stock subscription required for membership was the greater of $500, 1.0 percent of the member's mortgage assets, or 0.3 percent of the member's total assets.[2] 12 U.S.C. 1426(b), 1430(e) (1994). If a member were to borrow from its Bank, the amount of Bank stock it was required to own could not be less than 5.0 percent of the amount of Bank advances outstanding to the member. Each Bank was required to adjust the minimum stock investment required of each member, as of December 31st of each year, so that each member would own at least the required minimum amount of Bank stock, based on a percentage of either its assets or advances, whichever amount was higher. Each Bank had the discretion to retire any ''excess'' stock held by a member, *i.e.*, stock in excess of the minimum required for that member, upon the application of the member. Once issued, the stock of a Bank could be transferred only between the member and the Bank or, with the approval of the Finance Board, from one member to another member or to an institution in the process of becoming a member. The Bank Act required that all stock issued by a Bank share in dividends equally and without preference. The Bank Act also allowed any member, other than a federal savings and loan association, to withdraw from membership by providing six months written notice to the Finance Board. At the end of the six-month notice period, and provided that all indebtedness owed by the withdrawing member to the Bank had been liquidated, a Bank could redeem the stock of the withdrawing member, paying cash to the member equal to the par value of the stock. Any such withdrawing member could not rejoin the Bank system for 10 years, with only limited exceptions.

D. Overview of the Proposed Rule

On July 13, 2000, the Finance Board published a Notice of Proposed Rulemaking to amend its regulations to implement the capital requirements of the GLB Act. The proposed rule initially included a 90-day comment period, which would have closed on October 11, 2000. See 65 FR 43408–43447 (July 13, 2000). On September 19, 2000, the Finance Board extended the comment period until November 20, 2000. See 65 FR 57748 (September 26, 2000).

The proposed rule contemplated a significantly different capital structure than that adopted in this final rule, which was due in large part to certain assumptions about how difficult it would be for the Banks to sell their new stock, particularly the Class B stock. For instance, it was initially envisioned that Class B stockholders would demand the ability to control the boards of directors of the Banks if they were to commit their capital for five years. In order to protect the interests of the Class A stockholders from possible manipulation by the Class B stockholders, the proposed rule would have required the Class A stock to pay a stated dividend that would have priority over the Class B dividends. The Finance Board also provided for maximum flexibility in the capital plans to allow for the Class B stock to have as many pure equity attributes as a Bank might wish to adopt. During the notice and comment period, the Finance Board's initial assumptions were challenged, and the concerns became less of an issue for the Banks and their members, and, therefore, less of a concern for the Finance Board.

Many provisions of the proposed rule paralleled the requirements of the GLB Act, such as authorizing each Bank to issue either or both Class A or Class B stock. The proposed rule also

[1] A member also was allowed to purchase the stock in installments, under which it would pay one-quarter of the full amount at the time of application, and the remainder in three installments over the following 12 months. 12 U.S.C. 1426(c) (1994).

[2] The Bank Act referred to a member's ''aggregate unpaid loan principal,'' which the Finance Board has defined to include a variety of mortgage assets, such as home mortgage loans, combination loans, and mortgage pass-through securities. 12 U.S.C. 1426(b)(1) (1994); 65 FR 8253 (Feb. 18, 2000), 12 CFR 925.1. For purposes of applying the 1.0 percent of mortgage assets test, the Bank Act also established a statutory presumption that each member had at least 30 percent of its assets in mortgage related instruments. 12 U.S.C. 1430(e)(3) (1994). The effect of the presumption was that commercial banks (which typically have a lower percentage of their assets in mortgage related instruments than do savings associations) were required to maintain a minimum investment equal to the greater of 1.0 percent of mortgage assets, 0.3 percent of total assets, or 5.0 percent of outstanding advances. Separately, a member that was not a ''qualified thrift lender'' (QTL), *i.e.*, an institution with less than 65 percent of its assets in certain mortgage related instruments, was subject to a higher ''percentage of advances'' requirement, which varied inversely with its QTL ratio.

authorized each Bank to issue subclasses of either Class A or Class B stock. The proposed rule would have established certain characteristics for the Class A stock, such as a stated dividend, a priority for payment of dividends, and a priority in liquidation. The Class A stock would be issued and redeemed at par value, but the Class B stock could be issued at par or at any other price. By statute, both classes of stock may be redeemed only at par value, but the proposed rule would have required the Banks to repurchase Class B stock at a negotiated price. The proposed rule required that a Bank issue stock only to its members and that the initial issuance of the Class A and/or Class B stock be done through any fair and equitable method of distribution. The Banks would have been permitted to require each member to invest in the Class A stock of the Bank as a condition of becoming a member of the Bank, though a member would have the option of investing a lesser amount in the Class B stock. The Banks also would have been permitted to require a member to invest in the Class A or Class B stock as a condition to doing business with the Bank. The proposed rule also would have required each Bank to specify ''operating capital ratios,'' which would be somewhat greater than the Bank's minimum leverage and risk-based capital ratios. The proposed rule would have prohibited a Bank from requiring additional stock purchases by members if doing so would cause the Bank to exceed either its operating total capital ratio or its operating risk-based capital ratio, though it would have permitted a Bank to establish a membership fee in lieu of the minimum stock investment. Separately, the proposed rule would have prohibited any member (including its affiliates) from owning more than 40 percent of any class of Bank stock, or a lower limit established by the Bank.

Under the proposed rule, each Bank would have been authorized to determine the manner in which the members of the Bank were to elect directors and how the elected directorships were to be allocated, *i.e.,* among the several states in each district or otherwise. The voting rights also were to be determined by each Bank, subject to a regulatory cap that would have barred any member (including its affiliates) from casting more than 20 percent of the votes in any election of directors. Those provisions of the proposed rule were premised on an implicit repeal of section 7 of the Bank Act (which relates to the designation of directorships and the election of directors) by the capital provisions of the GLB Act.

The proposed rule would have permitted a member to transfer Bank stock to another member, with such transfers being at a price to be agreed to by the members. It also would have barred any transfers of stock that would result in any member (including its affiliates) having more than 40 percent of any class of the Bank's outstanding stock, though it would have permitted a Bank to establish a lower percentage. In a similar fashion, the proposed rule would have allowed a Bank to repurchase its outstanding stock at any time, but at a negotiated price.

The proposed rule adopted the minimum total capital leverage requirement specified by the GLB Act. It also specified that a Bank must hold an amount of permanent capital at least equal to the sum of the Bank's credit, market, and operations risk charges, calculated as specified in the proposal. The Finance Board also proposed to reserve the right to require a Bank to hold amounts of total and permanent capital above the minimum specified levels, if such higher levels were warranted for reasons of safety or soundness.

The proposed rule set forth the methods to be used for calculating credit risk charges for all on-balance sheet assets and off-balance sheet items held by a Bank and established risk weightings for these assets and items based upon broad categories. In addition, for rated assets and off-balance sheet items and for mortgage assets, risk weightings were further differentiated by ratings and remaining maturity. The proposed rule also set forth broad standards that a Bank must meet in developing its internal risk model or cash-flow model to be used to calculate the Bank's market risk capital charge. The rule also required a Bank to receive Finance Board approval before the model could be used, and to undertake an annual validation of its model. The proposed rule also would have required a further capital charge equal to the amount by which the market value of the Bank's capital, calculated using the internal risk model, fell below 95 percent of the book value of the Bank's total capital, calculated using GAAP. The proposed rule also established an operations risk charge equal to 30 percent of a Bank's credit and market risk, but allowed a Bank to reduce this charge with Finance Board approval by providing an alternative method for calculating its operations risk or by obtaining insurance to cover it for such risk. The proposed rule, however, required that at no time could the operations risk charge be less than ten percent of the Bank's credit and market risk charges. The proposed rule also required the Banks to calculate their capital levels and total risk-based capital charge as of the last business day of each month and report this information to the Finance Board by the fifteenth of the next month.

The proposed rule would have required a Bank to maintain sufficient liquidity to cover its needs for five days of inability to access the consolidated obligation debt markets. Separately, the proposed rule set forth limits on a Bank's extension of unsecured credit, both to a single counterparty and to affiliated counterparties, and established monthly reporting requirements based upon a Bank's extension of unsecured credit and combined secured and unsecured credit to a single counterparty and to affiliated counterparties. It also proposed incorporating into the rule, requirements from the Finance Board's Financial Management Policy (FMP) concerning a Bank's use of hedging instruments and proposed providing specific authority for the Banks to engage in certain off-balance sheet transactions.

E. Overview of Comments Received

The Finance Board received 143 comments on the proposed rule. Ten of those comments were submitted before the proposed rule was published. Of the 133 comments received after publication of the proposed rule, 25 comments came from the 12 Banks; 1 comment was received from a not-for-profit housing association; 73 comments were received from member institutions; 25 comments came from banking and other trade associations; 6 comments were received from other parties associated with the mortgage industry; 2 comments came from members of Congress, and 1 comment was submitted by the Department of the Treasury.

To the extent that the comments raised questions about particular aspects of the proposed rule, those comments and the Finance Board's response to them are discussed below as part of the explanation of the relevant provisions of the final rule.

In general, many commenters recommended that the Finance Board preserve the cooperative ownership structure of the Bank System by eliminating provisions of the proposed rule that were perceived to threaten the cooperative nature of the Bank System. In particular, a number of commenters believed that provisions in the proposed rule permitting the payment of

membership fees in lieu of a minimum stock investment, trading of Bank stock among the members, the repurchase of Bank stock at a negotiated price, and barring the Banks from requiring their members to retain Bank stock that was purchased to support a particular transaction with the Bank would undermine the cooperative structure of the Bank System because such provisions would tend to separate ownership of the Bank System from the use of its services.

Many commenters also recommended that the Finance Board pay close attention to the possible tax implications of provisions in the rule, principally as they relate to the members of the Banks. For example, commenters expressed concern that by establishing a stated dividend for the Class A stock and giving it a priority over payment of dividends on the Class B stock, the proposed rule might create a taxable event for certain members upon the conversion of some of their existing stock to Class A stock.

Commenters expressed other concerns about the capital structure provisions of the proposed rule. Nearly all commenters that addressed the issue of the operating capital ratios recommended that they be eliminated, principally because the manner in which the operating ratios would have worked would have resulted in members being treated unequally with regard to their stock purchase requirements, depending on when they purchased their stock. Many commenters asked, if the final regulation were to retain the operating ratio concept, that such limits should be more appropriately set as a range, rather than a fixed number. With respect to provisions related to the designation of directorships and the election of directors, many commenters believed that the GLB Act did not repeal by implication any provisions of section 7 of the Bank Act, as the Finance Board had proposed. With respect to the provision that would have barred any member or its affiliates from owning more than 40 percent of the stock of any Bank, nearly all commenters that addressed the issue recommended eliminating that provision, arguing that any concern about control of a Bank could be better addressed by limits on the amount of stock that a member may vote.

Many commenters addressed the risk-based capital provisions in the proposed rule. With respect to credit risk, many commenters argued that the capital charges assigned in the proposed rule to advances, as well as to mortgage assets rated BBB or lower, were too conservative. With respect to market risk, many commenters indicated that the value-at-risk model is inappropriate for measuring the long-term market risk profile of a Bank. Many commenters also opposed applying a 95 percent of market value to book value test because they believe it fails to provide a Bank with sufficient flexibility to manage its entire portfolio of activities. Finally, with respect to operations risk, many commenters stated that a capital charge of 30 percent of the sum of credit and market risk was too high, and that there was no sound theoretical basis for linking operations risk to credit and market risk.

The Finance Board has made significant revisions in the final rule in response to the comments received, particularly with respect to matters of capital structure. The Finance Board also has retained much of the substance of the proposed rule with respect to the risk-based capital provisions. The changes from the proposed rule, as well as the provisions that have been retained, are described in more detail below in the discussion of specific provisions of the final rule.

II. The Final Rule

A. Part 915—Designation and Election of Directors

Certain provisions of part 931 of the proposed rule would have authorized each Bank to determine the allocation of the elected directorships among the states in the Bank's district, and to determine how the members would elect those directors. For the reasons stated below, the Finance Board has deleted those provisions from the final rule and, apart from the matter of allowing a Bank to establish voting preferences, part 931 no longer addresses these issues. Instead, the final rule includes a number of revisions to part 915 of the Finance Board's elections regulations that conform those regulations to the new capital structure required by the GLB Act. Those amendments are described below.

Section 7 of the Bank Act addresses, among other things, the manner in which the members of each Bank elect the directors of the Bank and the manner in which the Finance Board allocates elected directorships among the states in each Bank district. 12 U.S.C. 1427. Section 7(a) of the Bank Act establishes the basic size and composition of the boards of directors for the Banks, providing that each board shall consist of fourteen directors, with eight directors elected by the members and six directors appointed by the Finance Board.[3] 12 U.S.C. 1427(a). Section 7(b) of the Bank Act requires the Finance Board to designate each elected directorship as representing the members located in a particular state within the Bank district, and section 7(c) directs the Finance Board to make those designations based on the approximate ratio of the number of shares of Bank stock ''required to be held'' by the members located in each of the respective states as of the end of each calendar year. 12 U.S.C. 1427(b), (c). Section 7(c) includes two exceptions, one of which requires that each state be allocated at least one directorship (but not more than six) and the other of which requires each state to be allocated no fewer directorships than were allocated to it in 1960. 12 U.S.C. 1427(c). Section 7(b) separately provides that in an election to fill a directorship each member may cast one vote for each share of Bank stock that it was ''required to hold'' as of the end of the prior calendar year, subject to a statutory cap. 12 U.S.C. 1427(b). Under that cap, the maximum number of votes that any member may cast in such an election is equal to the average number of shares of stock ''required to be held'' by all members located in the same state as of the end of the prior calendar year.

The GLB Act did not expressly amend section 7 as it relates to the designation of directorships or the election of directors. Section 931.3(b) of the proposed rule, however, would have deemed those provisions of section 7 to cease to apply after the new capital structure for the Banks had been established. In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board explained that it had preliminarily determined to deem those provisions of section 7 to have been repealed by implication by the GLB Act amendments to section 6 of the Bank Act regarding the capital structure of the Bank System. During its initial consideration of the proposed rule, the Finance Board had been advised that the members of the Bank System would be unlikely to purchase Class B stock unless they received some assurance of being able to elect a majority of the directors to the board of each Bank. Because the ability to sell the Class B stock is an essential aspect of the new capital structure established by the GLB Act, the Finance Board had serious concerns that retention of the state-based directorship structure would

[3] As a practical matter, the boards of directors at most of the Banks have more than 14 directorships, which is due in part to the operation of a statutory grandfather provision, and in part to the creation of discretionary directorships by the Finance Board in certain Bank districts.

discourage the members from purchasing the Class B stock, thereby frustrating the intent of the Congress to establish a risk-based permanent capital structure for the Banks. Accordingly, the Finance Board preliminarily determined that the possibility that the state-based directorship structure would preclude the sale of sufficient amounts of Class B stock to capitalize the Banks created an irreconcilable conflict between section 6 and section 7 of the Bank Act. The Finance Board deemed that conflict to be sufficient to support an implied repeal of those provisions of section 7. In place of the directorship structure established by section 7, the Finance Board proposed to allow each Bank to specify the manner in which the members would elect members to the board of directors, to require each Bank to assign voting rights to the Class B stock and allow the Banks to assign voting rights to the Class A stock, and to limit the number of votes that any member and its affiliates could cast in an election to 20 percent of the votes eligible to be cast in the election.

The Finance Board received numerous comments criticizing its proposal to deem certain provisions of section 7 to have been implicitly repealed by the capital provisions of the GLB Act. Many of those comments questioned the factual premise underlying the implicit repeal, *i.e.*, that the members would not purchase Class B stock unless they had some assurance of being allowed to elect a majority of the board of directors for the Bank, and contended that the Finance Board could find alternative ways to reconcile the provisions of section 6 and section 7. A number of comments also noted that unless the Finance Board could identify a more demonstrable conflict between section 6 and section 7, a determination that provisions of the latter had been implicitly repealed by the former would be unlikely to withstand a legal challenge.

Since the Finance Board issued the proposed rule, the staff of the Finance Board has had numerous discussions with representatives of the Banks, as well as with members and other interested parties, about this and other aspects of the proposed rule, and has received prototype capital plans from several of the Banks. As a result of those comments and those discussions, the Finance Board has been persuaded that the retention of the state-based directorship structure would not be likely to discourage members from purchasing Class B stock. Indeed, a number of the Banks have indicated their intention to issue only Class B stock or to require the purchase of Class B stock both as a condition of membership and as a condition of transacting business with and obtaining services from the Bank. Under any of those approaches, the Finance Board's prior concern about the Banks being unable to sell Class B stock would become moot. Accordingly, the final rule does not deem any provisions of section 7 of the Bank Act to have been implicitly repealed by the GLB Act. Because § 931.3 of the proposed rule, which would have authorized the boards of directors of each Bank to establish as part of the capital plan the manner in which the members would elect directors, was premised on an implied repeal of certain provisions of section 7, that section has been deleted from the final rule.

As stated in the proposed rule, the Finance Board is mindful of its obligation to give effect to the laws as written by the Congress unless two provisions are in such irreconcilable conflict that the Finance Board cannot as a practical matter give simultaneous effect to both provisions. Based on the information currently available, the Finance Board no longer perceives any such conflict between the capital provisions of section 6 and the directorship provisions of section 7. It remains possible, however, as the Banks develop their capital plans and offer the Class A and/or Class B stock to their members, that such a conflict may arise. If, while attempting to develop or to implement their capital plans, the Banks provide demonstrable evidence that they have been unable to sell the Class B stock (or have been unable to sell sufficient quantities of Class B stock) and that their inability to sell the Class B stock has been caused by the retention of the state-based directorship provisions in section 7, the Finance Board would be prepared to revisit the issue of an implied repeal. Absent such evidence, the directorship structure of the Banks will not be changed in the final rule.

Because the statutory provisions regarding the designation of directorships and the election of directors are linked to the capital provisions in section 6 of the Bank Act, however, the GLB Act amendments to section 6 do require the Finance Board to amend its directorship and elections regulations in certain respects. Accordingly, the final rule includes a number of conforming amendments to those regulations, including a provision that addresses the authority of the board of directors of a Bank to establish voting preferences, all of which are described below.

The first of the conforming amendments to part 915 relates to the manner in which the Finance Board designates elected directorships among the states of each Bank district. Section 7 of the Bank Act requires the Finance Board to designate elected directorships based on the amount of Bank stock that section 6 of the Bank Act requires the members in each state to hold as of the end of the prior calendar year. Under the present single-class capital structure, the determination of the number of shares required to be held is relatively straightforward. Because the GLB Act authorizes the Banks to issue two classes of stock, the final rule adds a new provision to § 915.3(b) to clarify that, for any Bank that has two classes of stock outstanding, the Finance Board shall conduct the designation of directorships based on the combined shares of each class of stock that the members are required to hold as of the end of the year.

Because the GLB Act repealed the statutory stock purchase requirements and replaced them with a provision requiring the capital plan for each Bank to specify the minimum stock investment required of each member, the Finance Board is further amending § 915.3(b) to address how the annual designation of directorships will be conducted both before and after the implementation of the capital plan. If a Bank's capital plan was not in effect on the immediately preceding December 31st, the number of shares of Bank stock required to be held by the members in each state will be determined pursuant to § 925.20 and § 925.22, which reflect the stock purchase requirements specified by section 6 of the Bank Act, as in effect immediately prior to the GLB Act. If a Bank's capital plan was in effect on the immediately preceding December 31st, the number of shares of Bank stock required to be held by the members in each state will be determined in accordance with the minimum investment established by the capital plan for that Bank. For any members whose investment in Bank stock is less than the minimum investment required by the capital plan (*i.e.,* during a transition period), the amount of stock to be used in the designation of directorships shall be the number of shares of Bank stock actually owned by those members as of December 31st.

Because the annual designation of directorships is keyed to the amount of stock required to be held as of the prior calendar year, the earliest possible date that the Finance Board could designate directorships under the new capital plans would be in 2002. With regard to

the designation of directorships that the Finance Board must conduct in 2001, those determinations must be based on the amount of Bank stock required to be held as of December 31, 2000, which means that the current capital structure will determine how those directorships will be allocated.

Under current law, the amount of Bank stock ''required to be held'' by a member as of the end of the calendar year is the greater of $500, one percent of the member's mortgage assets, or five percent of the member's outstanding advances. As discussed above, once a Bank's capital plan has taken effect, the amount of Bank stock required to be held will be equal to the minimum investment in Bank stock for each member established in the Bank's capital plan. As discussed elsewhere in this **SUPPLEMENTARY INFORMATION** section, § 931.3 of the final rule requires a Bank to require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with or obtaining advances and other services from the Bank. In all cases, both before and after the effective date of a Bank's capital plan, the Finance Board would use the information provided to it by the Banks in the annual capital stock report, as required by § 915.4, as the basis for calculating the relative amounts of stock held by the members in the respective states. The final rule also includes one technical correction to § 915.3(b)(3), which replaces the words ''the Bank'' with ''that State''.

Another conforming amendment relates to the annual reports submitted by the Banks regarding the stock holdings of their members. Under current law, § 915.4 requires each Bank to submit, by no later than April 10th of each year, a capital stock report that shows the amount of Bank stock required to be held by the members in each state as of the end of the prior calendar year. 12 CFR 915.4. The Finance Board uses that information to conduct the designation of directorships for the states in each Bank district. Because the amount of stock that each member must hold ultimately will be determined by the capital plan approved for each Bank, rather than in accordance with the current statutory formula, the final rule amends § 915.4 to address how the Banks are to determine the amount of Bank stock that each member is required to hold, both before and after the effective date of a Bank's capital plan. The final rule amends § 915.4(a) to provide that if a Bank has issued more than one class of stock, it shall report to the Finance Board the combined number of shares of stock required to be held by the members, *i.e.,* the report will not distinguish between the required amounts of Class A and Class B stock. The final rule also provides that if a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that the members are required to hold shall be determined in accordance with the existing stock purchase requirements, as stated in § 925.20 and § 925.22. For any record date occurring after the capital plan is in effect, the number of shares of required Bank stock will be the minimum investment established for each member by the capital plan, provided that, for any member whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be reported shall be the number of shares of Bank stock actually owned by the member as of the record date. Thus, if a Bank's capital plan were in effect as of December 31st of a given year, the capital stock report to be submitted before April 10th of the following year would be based on the amounts of Bank stock required to be held by the members as the ''minimum investment'' established by the capital plan. If a Bank's plan had not taken effect as of December 31st of a given year, then the capital stock report to be submitted the following April would be based on the amount of stock required to be held pursuant to § 925.20 and § 925.22. None of these amendments would affect the authority of a Bank to establish voting preferences in favor of either the Class A or the Class B stockholders, which it could do as part of its capital plan and which is addressed below.

Because the proposed rule would have deemed certain provision of section 7 to have been repealed by implication, the proposed rule would have authorized each Bank to determine the manner in which the members would elect the directors for each Bank. The proposed rule also would have capped the number of votes that any member or its affiliates could cast in an election at 20 percent of the number of eligible votes, though it would have allowed a Bank to establish a lower cap. As noted previously, the Finance Board has determined that there is no need at present to deem any provisions of section 7 to have been repealed by implication. For that reason, the Finance Board is not adopting the proposed amendments that would have allowed each Bank to determine the manner in which the members elect the directors of the Bank. Instead, the final rule gives effect to the provisions of section 7(b) of the Bank Act by retaining the existing regulations regarding the election of directors, albeit with a number of revisions to conform them to the new two-class capital stock structure established by the GLB Act. A number of commenters criticized the Finance Board for proposing to determine that certain provisions of section 7 of the Bank Act had been implicitly repealed, but nonetheless argued that the matters of how the directorships should be allocated among the states and how the members should elect directors were best left for the individual Banks to determine. Because section 7 of the Bank Act addresses both of those issues, the Finance Board cannot allow the Banks to allocate the directorships or to determine the manner of electing directors without deeming section 7 to have been implicitly repealed, which the Finance Board has determined not to do.

As described previously, section 7(b) of the Bank Act provides that each member shall be entitled to cast one vote for each share of Bank stock it was required to hold as of the end of the prior year, subject to the statutory cap, i.e., the average number of shares of Bank stock required to be held by the members in each state as of the end of the year. The final rule amends § 915.5(b) to restate those general provisions of section 7(b), i.e., for each directorship that is to be filled in an election, each member that is located in the state to be represented by the directorship and that is eligible to vote in the election may cast one vote for each share of Bank stock that it was required to own as of the end of the prior calendar year, subject to the statutory cap.

For any Bank that has issued only one class of stock, the statutory voting cap will be calculated in the same manner as it is calculated at present, which is a simple average of the number of shares of Bank stock held by the members in each state as of the record date. For any Bank that has issued more than one class of stock, however, the final rule provides that the statutory cap will be applied separately for each class of stock. Thus, a Bank that has issued two classes of stock must determine, for each state, the average amount of Class A stock required to be held by the members in that state as of the end of the prior year, as well as the average amount of Class B stock required to be held by the members in that state as of the end of that year. As noted previously, once the capital plan is in effect, the amount of stock that each member is required to hold as of the end

of the year will be the ''minimum investment'' that each member is required to maintain in order to remain a member and to do business with the Bank. Thus, a member that has purchased both Class A and Class B stock would be entitled to cast one vote for each share of Class A stock it is required to own, up to the average holdings of the Class A stock, plus one vote for each share of Class B stock, up to the average holdings of the Class B stock by the members in that state, with the combined total being the number of votes that the member is entitled to cast in the election. The Finance Board considered, as an alternative to the separate caps for each class, using an average of the combined amounts of Class A and Class B stock that the members in a particular state were required to own as of the end of the year. Because it is possible that even in a two-class stock structure there may be members that own only one class of Bank stock, the Finance Board believes that the most equitable way of calculating the statutory voting cap is to do so separately for each class of stock outstanding.

As with the other conforming amendments, noted above, regarding the designation of directorships and the capital stock report, the final rule provides that if a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that a member is required to hold as of the record date shall be determined in accordance with § 925.20 and § 925.22. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that a member is required to hold as of the record date shall be determined in accordance with the minimum investment established by the Bank's capital plan, provided, however, that for any members whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be counted shall be the number of shares of Bank stock actually owned by those members as of the record date.

As was discussed in the proposed rule, what appeared to be most in conflict between the directorship provisions of section 7 and the capital provisions of section 6 was the voting rights of the members. Specifically, section 6(c)(4)(B) of the Bank Act, as amended by the GLB Act, expressly authorizes the board of directors of a Bank to establish voting preferences for its capital stock. 12 U.S.C. 1426(c)(4)(b). Section 7(b) of the Bank Act, however, provides (subject to the statutory cap) that each share of Bank stock entitles the holder to cast one vote in an election of directors. 12 U.S.C. 1427(b). Even though the Finance Board has determined not to deem any provisions of section 7(b) to have been repealed by implication by the GLB Act, the issue remains of how best to reconcile these two provisions. Based on the statutory language concerning voting preferences, the Finance Board has determined that the most appropriate way to strike a balance between and reconcile these two provisions is to consider the ''one share, one vote'' provisions of section 7(b) as the general rule for voting, subject to the statutory cap, but to recognize that the provisions of section 6(c)(4)(B) of the Bank Act, as amended, authorize the individual Banks to create an exception to the general rule by establishing a voting preference.

The language of section 6(c)(4)(B), as amended by the GLB Act, provides that each Bank ''shall include in its capital structure plan provisions establishing terms, rights, and preferences, including * * * voting * * * preferences for each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.'' 12 U.S.C. 1426(c)(4)(B). That language clearly authorizes the board of each Bank to establish voting preferences as part of its capital plan, but it does not mandate that a Bank must do so with regard to the election of directors. Under the statute, the question of whether to establish voting preferences is left to the board of directors of the Bank, subject to the regulatory oversight of the Finance Board. Because the creation of a voting preference is not mandatory, there is no immediate conflict between section 6(c)(4)(B) and section 7(b). Indeed, if a Bank declines to establish a voting preference for one class of stock over the other there will be no conflict at all. In that case, each share of Bank stock will entitle the holder to cast one vote in the election of directors, subject to the statutory cap, as implemented by the final rule. If, however, a Bank were to exercise the authority conferred by section 6(c)(4)(B) to confer a preference, for example, on the holders of the Class B stock as part of its capital plan, then the voting rights for the Class A and the Class B members would be governed by the preference established by that Bank. In effect, the voting preferences established by the Bank as part of its approved capital plan on the authority of section 6(c)(4)(B) would supercede the provisions of section 7(b), which otherwise would grant each member one vote for each share of stock that it was required to own as of the record date.

Because the concept of a voting preference relates principally to the relative distribution of voting power between two or more classes of stockholders, the Finance Board believes that the authority to establish voting preferences should not extend to matters beyond that distribution of voting power. In other words, a Bank can invoke the authority of section 6(c)(4)(B), 12 U.S.C. 1426(c)(4)(B), to establish a preference structure that favors the Class B stock, but it should not be able to rely on that authority to override other provisions of section 7(b), 12 U.S.C. 1427(b), such as the statutory cap on voting, which, as noted above, will be applied separately to each class of Bank stock. For that reason, the final rule makes clear that, even if a Bank invokes its authority to establish voting preferences that vest the exclusive or predominant voting power in one class of stock, the holders of that class of stock will remain subject to the statutory cap. Accordingly, § 915.5(c) of the final rule provides that, notwithstanding the general rule for voting in an election of directors, a Bank may include as part of its capital plan voting preferences for any class of stock issued by the Bank, and that such preferences shall supercede the general provisions that otherwise would confer one vote for each share of Bank stock, subject to the statutory cap. The final rule includes a corresponding amendment to § 933.2, which addresses the contents of the capital plans.

Separately, the final rule includes two other amendments of a technical nature. The first amendment, to § 915.6(a)(3), makes a conforming change to a citation to another regulation within the text of the rule. The second technical amendment adds a sentence to § 915.7(b)(2) regarding the terms ''appropriate federal regulator'' and ''appropriate State regulator'' that was inadvertently deleted from the regulation as part of an earlier rulemaking.

B. Part 917—Powers and Responsibilities of Board of Directors

The Finance Board is amending § 917.3 to require the Banks to include as part of their risk management policies total and risk-based capital ratios at which the Banks intend to operate. The final rule also amends § 917.9 to conform the existing provisions, which require dividends to be paid without preference, to the requirements of the GLB Act and Part 931 of the final rule.

As described elsewhere in this **SUPPLEMENTARY INFORMATION** section, the Finance Board has responded to criticisms about the proposed operating capital ratios by deleting them from the final capital rule. Although the Finance Board agrees that the final capital rule

should not impose operating capital ratios, the Finance Board believes that the concept of operating capital ratios is useful as a risk management tool for the Banks, as well as a supervisory tool for the Finance Board. For that reason, the final rule amends § 917.3 to require each Bank to include, as part of its risk management policy, a provision that establishes the total and risk-based capital levels at which the Bank intends to operate. In addition, the Finance Board has considered comments suggesting that such operating ratios are better expressed as a range, rather than as a fixed number, and believes that this approach would provide additional flexibility to the Banks in managing their capital levels. Accordingly, the amendments to § 917.3 allow the Banks to set their own operating total capital and operating risk-based capital ratios as a range.

Separately, the Finance Board is amending § 917.9, which currently requires that dividends on Bank capital stock be computed without preference, to conform it to the GLB Act and to other provisions in the final rule. The GLB Act authorizes the board of directors of each Bank to determine the rights, terms, and preferences for each class of stock, consistent with section 6 of the Bank Act, the regulations of the Finance Board, and market requirements. Because § 931.4 of the final rule permits the board of directors of a Bank to establish in the Bank's capital plan different dividend rates or preferences for each class or subclass of stock, it is necessary to make a corresponding change to § 917.9, so that the current requirement that dividends be computed without preference not apply if a Bank has established any dividend preferences for one or more classes or subclasses of its capital stock. For any such Bank, once the capital plan takes effect, the requirement that dividends be computed without preference will cease to apply to that Bank.

C. Part 925—Membership Amendments

Minimum Stock Purchase Requirements. The proposed rule would have removed from the existing membership regulation all provisions pertaining to the amount of Bank stock an institution must purchase upon becoming a member. *See* 12 CFR 925.19 through 925.23 (Subpart D); 925.25(d)(2)(ii), (iii). In the final rule, the Finance Board has retained all of those provisions because the GLB Act requires the existing stock purchase requirements to remain in effect for each Bank until the Bank has implemented its capital plan. Because of that requirement, the Finance Board anticipates that it will remove those provisions from its regulations only after the capital plans for all of the Banks have been implemented. As each Bank implements its capital plan, the amount of stock that each member of that Bank would be required to purchase shall be the minimum investment established by that Bank's capital plan.

Consolidations Involving Members. Section 925.19 of the proposed rule would have consolidated existing §§ 925.24 and 925.25 into one provision addressing the consolidation of a member into another member or into a nonmember. In the final rule, the Finance Board has consolidated the substance of §§ 925.24 and 925.25 into an amended version of § 925.24. The substance of § 925.24 of the final rule is much the same as proposed § 925.19; because the final rule does not rescind the several provisions that the proposed rule would have rescinded, the numbering of the amended provisions in the final rule does not correspond to the numbering of the proposed amendments. As amended, § 925.24 retains much of the structure of the proposed rule, albeit with some technical, clarifying, and organizational changes.

Section 925.24(b)(5) of the final rule addresses the consolidation of a member into a nonmember and differs somewhat from the proposed rule with regard to the minimum amount of Bank stock that the consolidated institution must purchase if it is approved for membership. Thus, if the capital plan for the Bank has not taken effect when the consolidated institution has been approved for membership, the amount of Bank stock that such institution must own shall be as provided in § 925.20 and § 925.22, which are the stock purchase requirements in effect prior to the enactment of the GLB Act. *See* 12 CFR 925.20, 925.22. If the capital plan for the Bank is in effect when the consolidated institution has been approved for membership, the amount of stock that such institution is required to own shall be equal to the minimum investment established by the capital plan for that Bank. These provisions reflect the more general transition provisions in § 931.9 of the final rule.

Voluntary Withdrawal. Section 6(d)(1) of the Bank Act, as amended by the GLB Act, provides that any member may withdraw from its Bank by providing written notice of its intent to do so, provided that on the date of the withdrawal there is in effect a certification from the Finance Board that the withdrawal will not cause the Bank System to fail to meet its required payment toward the debt service for the obligations issued by the Resolution Funding Corporation (RefCorp), in accordance with section 21B(f)(2)(C) of the Bank Act, 12 U.S.C. 1441b(f)(2)(C), *as amended.* (RefCorp Certification). 12 U.S.C. 1426(d)(1), *as amended.* The statute further provides that the receipt of the withdrawal notice by the Bank commences the applicable stock redemption periods for the stock owned by the member, *i.e.,* the 6-month and 5-year notice periods for Class A and Class B stock, respectively, after which the member may receive the par value of its stock in cash. During the notice period, the member remains entitled to receive any dividends declared on its stock. Section 925.20 of the proposed rule would have implemented these statutory provisions. Section 925.26 of the final rule retains these provisions, generally as proposed, but with several changes that are discussed below.

Section 925.26(a)(1) of the final rule provides that any member may voluntarily withdraw from membership by providing to the Bank written notice of its intent to do so. In response to comments, the Finance Board has revised the final rule to make clear that a Bank need not commit to providing any further services to a withdrawing member that would mature or otherwise terminate subsequent to the effective date of the withdrawal. Thus, a Bank could limit the maximum maturity of any new advances to a withdrawing member to the amount of time remaining until the date of withdrawal. Section 925.26(a)(1) also provides that a member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank, and further allows a Bank to impose a fee on any member that cancels its notice of withdrawal. Any such fee, or the manner of its calculation, must be specified in the capital plan. This provision of the final rule is in substance as it was proposed.

Section 925.26(a)(2) of the final rule requires the Banks to notify the Finance Board within 10 calendar days of receiving any notices of withdrawal or notices canceling a notice of withdrawal. Although notification to the Finance Board no longer is mandated by statute as a condition to withdrawal, retaining the requirement will allow the Finance Board to maintain an accurate membership database (which provides the official count of Bank System members), and to maintain historical records regarding Bank System membership, withdrawals, and cancellations of notices of withdrawal.

Being advised of member withdrawals also allows the Finance Board to anticipate changes in Bank System membership.

Because the Bank Act, as amended by the GLB Act, does not expressly link the withdrawal of membership to the redemption of stock, the proposed rule would have allowed a member to specify the date on which its membership would terminate, which date could be no later than the end of its last stock redemption period. The proposed rule provided further that if the notice did not indicate a withdrawal date, withdrawal would be deemed to take effect on the date that the last applicable stock redemption period ends.

Commenters criticizing this provision expressed concerns about whether a termination in membership prior to the end of the redemption periods would result in a nonmember owning Bank stock, which arguably would conflict with the provisions of the GLB Act that restrict ownership of Bank stock to members. Although the Finance Board believes that the appropriate time for determining whether Bank stock is lawfully held by a ''member'' of the Bank is the date on which the member acquires the Bank stock, the Finance Board is revising the final rule to make the date of termination coincide with the expiration of the longest stock redemption period, unless the institution cancels its notice of withdrawal prior to that date. That approach is consistent with current practice at the Banks. In part, the proposed rule was premised on the view that under the new capital regime a member that wanted to terminate its membership prior to the end of the stock redemption periods could simply sell the Bank stock to another member, at a price to be negotiated by the two members. Because the final rule does not permit the members to establish a trading market for Bank stock, the provisions of the proposed rule that would have ''de-linked'' the termination of membership from the ownership of stock are no longer appropriate, and thus have been deleted.

As was proposed, § 925.26(c) of the final rule provides that the receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock held by that member that is not already subject to a pending request for redemption. Also as proposed, § 925.26(c) provides that in the case of an institution the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods for any stock that is not subject to a pending notice of redemption shall be deemed to commence on the date on which the charter of the former member is cancelled. The final rule makes no substantive changes to this provision.

As was proposed and as discussed above, § 925.26(d) of the final rule implements the Bank Act, as amended by the GLB Act, by providing that no institution may withdraw from membership unless, on the date that the membership is to terminate, there is in effect a RefCorp Certification. This provision is not substantively changed from the proposed rule. The GLB Act amended the Bank Act to require each Bank to pay 20 percent of its net earnings each year toward the RefCorp debt service. 12 U.S.C. 1441b(f)(2)(C), *as amended.* The GLB Act further required that before a member can withdraw from Bank membership, the Finance Board must have in effect a certification that the withdrawal of the member will not cause the Bank System to fail to make its required payments toward the RefCorp debt service. The Finance Board has previously addressed this matter by certifying that the withdrawal of any member will not cause the Bank System to fail to meet its RefCorp payments. Finance Board Resolution No. 2000–32 (June 23, 2000). The certification remains in effect until rescinded or superseded by the Finance Board. Accordingly, there is no need to revisit the issue as part of this final rule, and Bank members may withdraw from membership without having to request individual certifications from the Finance Board.

Involuntary Termination. Section 6(d)(2) of the Bank Act, as amended by the GLB Act, provides the grounds on which a Bank may terminate the membership of an institution, such as in the case of violating the Bank Act or Finance Board regulations, or insolvency. Section 6(d)(2) also provides that the applicable notice period for each class of redeemable stock shall commence on the earlier of: (i) The date of such termination; or (ii) the date on which the member provided notice of its intent to redeem the stock.

Section 925.21 of the proposed rule implemented the above statutory provisions. Section 925.27 of the final rule retains these provisions as proposed, with several changes discussed below. As was proposed, § 925.27(a) of the final rule provides that the board of directors of a Bank may terminate the membership of any institution that fails to comply with any requirement of the Bank Act, any Finance Board regulation, or any requirement of the Bank's capital plan, or becomes insolvent or otherwise subject to the appointment of a conservator, receiver, or other legal custodian under federal or state law. Section 925.27(a)(3) of the final rule also adds as an additional ground for termination any circumstances under which the retention of Bank membership would jeopardize the safety or soundness of the Bank, which is consistent with existing § 925.27(b)(4). *See* 12 CFR 925.27(b)(4). As was proposed, § 925.27(b) of the final rule provides that the applicable 6-month and 5-year stock redemption periods, respectively, for all Class A and Class B stock that is not already subject to a pending request for redemption, shall commence on the date that the Bank terminates the institution's membership. In response to a Bank commenter's suggestion, § 925.27(c) of the final rule adds language clarifying that an institution whose membership is terminated involuntarily shall cease being a member as of the date on which the board of directors of the Bank acts to terminate its membership. As was proposed, this section provides that the institution shall have no right to obtain any of the benefits of membership after that date. In response to one comment, the final rule clarifies that the institution shall be entitled to receive any dividends declared on its stock until the stock is redeemed by the Bank.

Prior to the GLB Act, section 6(e) of the Bank Act provided the Finance Board with the authority to terminate the membership of an institution that became insolvent. 12 U.S.C. 1426(e)(ii) (1994). Pursuant to that authority, the Finance Board adopted § 925.28(a), which provides that the membership of an institution placed in receivership (which in all likelihood would be insolvent) automatically terminates. 12 CFR 925.28(a). As discussed above, the GLB Act amended the Bank Act by vesting in the Banks, rather than the Finance Board, the authority to determine whether to terminate involuntarily the membership of an institution that is insolvent or placed into receivership. 12 U.S.C. 1426(d)(2)(A)(ii), *as amended.* One Bank suggested that the final rule retain the automatic termination provision in existing § 925.28 because that procedure has worked well and the proposed change would impose operational burdens on the Banks and receivers and conservators. The Finance Board has not implemented that recommendation in the final rule, because the GLB Act vests

the authority for making such decisions in the board of directors of each Bank, rather than in the Finance Board. Thus, if a member is placed into receivership or conservatorship or otherwise is determined to be insolvent, the board of directors of each Bank must determine whether it is most appropriate to allow that institution to remain a member of the Bank for some period of time or to terminate its membership under these provisions. The final rule also removes existing § 925.28(b) and (c) regarding the treatment of outstanding advances and Bank stock, and dividends on Bank stock, of a member placed into receivership, which are addressed generally in § 925.29 and § 931.4, respectively, of the final rule.

Disposition of Claims. The GLB Act did not amend section 10(c) of the Bank Act, which provides that a Bank shall have a lien upon and shall hold the stock of a member as further collateral security for all indebtedness of the member to the Bank. 12 U.S.C. 1430(c) (1994). The GLB Act did amend section 6(d)(3) of the Bank Act, which provides that upon the termination of membership for any reason, the outstanding indebtedness of the member to the Bank shall be liquidated in an orderly manner, as determined by the Bank, and upon the extinguishment of all such indebtedness the Bank shall return to the member all collateral pledged to secure the indebtedness. *Id.* § 1426(d)(3), *as amended.* Section 925.22 of the proposed rule would have implemented these two statutory provisions, and § 925.29 of the final rule retains these provisions, with several changes, as described below.

Section 925.29(a) of the final rule provides that if an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all outstanding indebtedness owed by that member to the Bank and for settling all other claims against the member. After all such obligations and claims have been extinguished or settled, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

Section 925.29(b) of the final rule provides that if an institution that has withdrawn from membership or that otherwise has had its membership terminated remains indebted to the Bank or has outstanding any business transactions with the Bank after the effective date of its termination of membership, the Bank shall not redeem or repurchase any Bank stock that is required to support the indebtedness or the business transactions until after all such indebtedness and business transactions have been extinguished or settled.

Readmission to Membership. Section 6(g)(1) of the Bank Act, as amended by the GLB Act, provides that an institution that divests all shares of Bank stock may not, after such divestiture, acquire Bank stock before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between Banks. 12 U.S.C. 1426(g)(1), *as amended.* Section 6(g)(2) of the Bank Act, as amended by the GLB Act, provides for an exception that allows any institution that withdrew from membership in a Bank before December 31, 1997 to acquire Bank stock at any time after that date, subject to the approval of the Finance Board and the requirements of the Bank Act. *Id.* 1426(g)(2), *as amended.*

Section 925.23 of the proposed rule implemented these statutory provisions. Section 925.30 of the final rule retains these provisions as proposed, with some clarifying language, described below. Section 925.30(a) of the final rule provides that an institution that has withdrawn from membership or otherwise has had its membership terminated, and which has divested all of its shares of Bank stock, may not be readmitted to membership in any Bank, or acquire any capital stock of any Bank, for a period of 5 years from the date on which its membership terminated and it divested all of its shares of Bank stock.

Section 925.30(b) of the final rule provides that an institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership or had its membership terminated. Section 925.30(b) further provides that any institution that withdrew from Bank membership prior to December 31, 1997, and for which the 5-year period has not expired, may apply for membership in a Bank at any time, subject to the approval of the Finance Board and the requirements of part 925.

D. Part 930—Definitions

As was proposed, § 930.1 of the final rule sets forth the definitions for the risk management and capital provisions of parts 931, 932 and 933. The Finance Board has adopted § 930.1 generally as proposed, with the changes discussed below.

The Finance Board has removed a number of the proposed definitions from the final rule because they are no longer relevant, given changes that have been adopted to the final capital regulations. The Finance Board has also removed the definition of the term ''NRSRO'' because the term is defined in § 900.1 of the Finance Board regulations, which provides definitions applicable to all parts of the Finance Board regulations. 12 CFR 900.1 (*as amended by* 65 FR 43969, 43981 (July 17, 2000).[4] Some changes also have been made in the final rule to clarify the meanings of terms, including ''market value at risk,'' ''capital plan,'' and ''permanent capital.'' The Finance Board also has added to § 930.1 of the final rule, definitions for some additional terms. The term ''minimum investment'' is defined as the minimum amount of Class A and/or Class B stock that a member is required to own to be a member of a Bank and to obtain advances or engage in other activities with the Bank, consistent with § 931.3 of the final rule. The term ''excess stock'' is defined as any amount of stock held by a member in excess of the minimum investment. The terms ''redeem or redemption'' are defined to mean the acquisition of Class A or Class B stock by a Bank at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock. The final rule defines the term ''repurchase'' to mean the acquisition by a Bank of excess stock prior to the expiration of the applicable statutory redemption period.

E. Part 931—Federal Home Loan Bank Capital Stock

In General. As described in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, 65 FR 43412 (July 13, 2000), the GLB Act requires the capital regulations to permit each Bank to issue ''any one or more'' of Class A or Class B stock. Class A stock is to be redeemable at par on six months written notice to the Bank; Class B stock is to be redeemable at par on five years written notice to the Bank. The board of directors of each Bank is to determine the ''rights, terms, and preferences'' for each class of stock, consistent with section 6 of the Bank Act, with the regulations of the Finance Board, and with market requirements. The regulations must prescribe the manner in which Bank stock may be ''sold, transferred, redeemed, or repurchased,'' and must restrict the issuance and ownership of Bank stock to members of the Bank, prohibit the issuance of other classes of stock, and provide for the liquidation of claims and the redemption of stock upon an

[4] A similar conforming change is adopted herein for part 956 of the Finance Board regulations.

institution's withdrawal from membership.

Apart from authorizing the issuance of two classes of Bank stock, the GLB Act eliminated certain key characteristics of the single class of Bank stock that had been established under prior law. For example, the Bank Act no longer mandates a statutory par value for all Bank stock of $100 per share and no longer requires all Bank stock to be issued at par value.[5] As a result, the Bank Act now authorizes a Bank to establish the par value for its Class A and Class B stock (which may differ), and permits the issuance of stock at a price other than par value.

Classes of Capital Stock. Section 931.1 of the proposed rule set forth the essential characteristics of the two classes of Bank stock. The proposed rule would have required the Class A stock to have a par value of $100 per share, be issued and redeemed only at par value, be redeemable in cash only on six-months notice, and pay a stated dividend that would have a priority over the Class B dividends. The proposed rule would have required each Bank to determine the par value for its Class B stock, as well as the price at which it would be issued, which could be at par value or at or some other price. The Class B stock also would have been redeemable only at par value and with five years notice, and would have been subordinated to the stated dividend on the Class A stock. The proposed rule also restated the statutory provision that grants the Class B stock an ownership interest in the retained earnings of the Bank. Although not expressly referenced by the GLB Act, the proposed rule would have authorized each Bank to issue one or more subclasses of Class A and Class B stock, provided that each subclass possessed all of the required characteristics of its class.

The final rule makes four principal changes to § 931.1 of the proposed rule, by eliminating the regulatory par value for Class A stock, eliminating the stated dividend for Class A stock, eliminating the priority for Class A dividends, and requiring that each Bank issue its Class B stock at its stated par value.

The commenters that addressed the issue of the par value of the Class A stock generally opposed having the par value set by regulation, contending that each Bank should determine the par value for its stock. The Finance Board agrees that it is appropriate to allow each Bank to determine the par value and issue price for its stock and has revised the final rule accordingly. Thus, for both Class A and Class B stock, the final rule provides that par value is to be determined by the board of directors of the Bank and stated in the Bank's capital plan. The final rule also extends to the Class B stock the requirement from the proposed rule that the stock be issued only at its par value, which the proposed rule had required only for the Class A stock. The provisions of the proposed rule that would have allowed a Bank to issue Class B stock at a price other than par value prompted criticism from several commenters. Those commenters recommended that the final rule require the Banks to issue Class B stock at its par value, and expressed concerns about allowing a Bank to issue stock at a price above par value when the Bank is required by statute to redeem the stock at its par value. Other commenters noted that allowing the Banks to issue Class B stock at less than its par value would be inconsistent with general corporate practice.

Some commenters requested that the final rule expressly allow a Bank to issue its Class B stock at ''book value,'' rather than at par value. Although the issuance of Class B stock at its book value would appear to be legally permissible under the Bank Act, such an approach would raise other issues, such as how the book value of a Bank would be calculated, how frequently the calculation would be made, and how a Bank would address the issue of selling stock to its members at prices that could vary day to day. Because of those and other issues concerning the issuance at book value, the Finance Board has determined not to include that as an option under the final rule.

A number of commenters also objected to the proposed requirement that Class A stock pay a stated dividend that would have a priority over the payment of dividends on Class B stock. The principal objection to that provision was that such a requirement may trigger a taxable event for some members upon the conversion of their existing Bank stock to Class A stock. One of the reasons for including that provision in the proposed rule was a concern that the members owning Class B stock might favor themselves over the members owning Class A stock with regard to the payment of dividends. The Finance Board received a number of comments suggesting that the concern was unfounded because the members owning the Class B stock also would be likely to own Class A stock, and thus would have no incentive to deprive the Class A stock of its dividends. The Finance Board sees merit in these arguments and thus has not included in § 931.1 of the final rule the requirement that the Class A stock have a stated dividend or a priority over the Class B dividend. Section 931.4 of the final rule addresses the issue of dividends, and generally allows a Bank to establish a dividend preference as part of its capital plan. Thus, the final rule permits, but does not require, a Bank to establish a stated dividend with a priority. To the extent that any provisions of a Bank's capital plan might unfairly disadvantage one class of stockholders, the Finance Board will be able to address any such inequities through the approval process for the capital plans.

A number of commenters opposed authorizing the issuance of subclasses of the Class A or Class B stock, suggesting that it would create a risk of ''cherry-picking'' among the subclasses that could be detrimental to the cooperative nature of the Bank System. Other commenters questioned the legal authority for subclasses. As explained in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the board of directors of a Bank has the authority under section 6(a)(4)(A) and section 6(c)(4)(B) of the Bank Act to establish different rights, terms, and preferences for the stock issued by the Bank. 12 U.S.C. 1426(a)(4)(A), (c)(4)(B), *as amended.* Those provisions clearly authorize a Bank to issue Class A stock with rights, terms, and preferences that differ from Class B stock, and there is nothing in those provisions that would prohibit a Bank from issuing some shares of Class B stock, for example, with rights, terms, and preferences that differ from other shares of the Bank's Class B stock. Thus, if the board of directors of a Bank wished to issue some shares of Class B stock for which the dividend will be determined based on the performance of a specific category of Bank assets and other shares of Class B stock for which the dividend will be determined based on the general profitability of the Bank, it would have the authority to do so. Obviously, if some shares of Class B stock were to have rights, terms, and preferences different from those of other shares of Class B stock, it would be eminently sensible for the Bank to distinguish between the two types of Class B stock, such as by giving them different names. Section 931.1(c) of the final rule makes clear that a Bank can designate such different shares of stock as separate ''subclasses'' if it wishes to do so. The authority to issue subclasses of either the Class A or Class B stock does not at

[5] 12 U.S.C. 1426(a) (1994). The minimum amount of Bank stock that each member was required to purchase had to be issued at par value. Any subsequent issuance could be at a price in excess of par value, but not less than par value. As a matter of practice, all stock of the Banks has been issued at par value.

all expand the authority of the Bank to issue anything other than Class A or Class B stock. Indeed, the proposed rule explicitly required each subclass to possess all of the characteristics of the class, and the Finance Board has retained that provision in the final rule. Accordingly, the Finance Board believes that the Banks have the authority to issue subclasses of stock and the final rule allows the Banks to do so, subject to the limits described above.

One other issue raised by commenters on this provision concerned the ownership of the retained earnings by the members that have purchased a Bank's Class B stock. The commenters asked that the final rule clarify that ownership of Class B stock does not confer an enforceable right to receive the retained earnings, and that the ownership interest extends to all undistributed retained earnings existing at the time of conversion as well to those existing thereafter. The commenters also sought clarification of how the ownership interest would be affected if a Bank were to issue subclasses of Class B stock, and who would own the retained earnings if a Bank did not issue Class B stock.

The GLB Act provides expressly that a member shall have no right to withdraw or otherwise receive any portion of the Bank's retained earnings, except through a dividend or capital distribution by the Bank, which resolves the first comment. Similarly, the GLB Act provides that the owners of the Class B stock shall own the ''retained earnings, surplus, undivided profits, and equity reserves, if any'' of the Bank, and does not limit that interest to any particular date in time. Accordingly, once a Bank issues any Class B stock, the holders of that stock will have an ownership interest in the retained earnings of the Bank from that date forward, until they redeem their Bank stock. After a member has redeemed (or the Bank has repurchased) all of its Class B stock, it no longer would have an ownership interest in the retained earnings of the Bank, apart from any dividends declared while the member owned the Class B stock. There is nothing in the language of the GLB Act that suggests that the interest of a Class B stockholder is limited to the retained earnings that exist on the date that the Bank converts from its existing stock to the Class A and/or Class B stock. The Finance Board believes that Congress intended this to be an ongoing interest, such that interest of the Class B stockholders would extend to whatever retained earnings are accumulated over time, as well as those that exist on the date of conversion to the new capital structure. Similarly, there is no reason to distinguish between subclasses of Class B stock with regard to the ownership of the retained earnings. Because the final rule requires that any subclasses of Class B stock must possess all of the characteristics of Class B stock, the creation of a subclass of Class B stock cannot extinguish ownership interest in the retained earnings of the Bank for that subclass, which is created by statute. The GLB Act also contemplates, however, that the board of directors of a Bank may establish different rights, terms, and preferences for the Bank's stock, which would allow the board of directors to establish different dividend rates for different subclasses of Class B stock, even though each share of Class B stock, including its subclasses, otherwise would have the same residual interest in the retained earnings of the Bank. The final rule does not address the ownership of the retained earnings of a Bank that has issued no Class B stock. The ownership interest in favor of the Class B stockholders was created by Congress as part of the GLB Act. Although earlier versions of the Bank reform legislation had included language that addressed the ownership of the retained earnings by the owners of other classes of stock, the GLB Act did not include such a default provision for any Bank that does not issue Class B stock. Because the ownership of the retained earnings was created by Congress, the Finance Board believes that the matter of ownership for those Banks without Class B stock is best left to the Congress to resolve.

As a related matter, Congress' decision to confer an ownership interest in the retained earnings on the holders of the Class B stock has created some uncertainty about whether a Bank can pay dividends on the Class A stock out of its retained earnings. By law, there are only two sources from which a Bank may pay dividends: previously retained earnings and current net earnings. 12 U.S.C. 1436(a). By giving the Class B stockholders the exclusive ownership of the retained earnings, the GLB Act appears to preclude the payment of dividends on the Class A stock from a Bank's retained earnings. Although by statute a Bank may pay dividends on its Class A stock from ''current earnings,'' that may not be possible under applicable accounting rules, which dictate that a Bank must credit its net earnings to retained earnings when it closes its books for the period. The final rule does not resolve this problem, which is addressed in somewhat greater detail under the discussion of § 931.4. The Finance Board intends to raise the issue of how best to reconcile these provisions in a subsequent rulemaking.

Issuance of capital stock. Section 931.2(a) of the proposed rule would have allowed each Bank to issue either Class A or Class B stock, or both Class A and Class B stock, as well as any subclasses of either. That section also required a Bank to issue stock only to its members, barred the issuance of any other class of capital stock, required the Bank to act as its own transfer agent, and to issue its capital stock only in book-entry form. The Finance Board also requested comments on whether the Banks should be allowed to issue stock certificates and, if so, what safeguards would be appropriate.

Several commenters indicated that requiring book-entry form for Bank stock is reasonable and would prevent the stock from being improperly transferred, though at least one commenter suggested that including the requirement in the rule is unnecessary. One Bank recommended that the final rule allow the use of stock certificates because certain members, such as insurance companies, may be required to hold certificates to comply with state law requirements. That Bank also recommended that a Bank be allowed to use outside transfer agents, indicating that such an option may be particularly helpful for a Bank that uses an outside entity to conduct elections.

The Finance Board is adopting the provisions of § 931.2 largely as set forth in the proposal. Although a number of insurance companies are members of the Bank System, it is the understanding of the Finance Board that all of the Banks currently issue their stock in book-entry form, which appears not to have caused any difficulties for such members under state law. Because no comments identified specific provisions of state law that would require an insurance company to be issued stock certificates in order to become a member of a Bank, the Finance Board is not prepared to create an exception for such entities in the final rule. To the extent that state law may require a particular member to hold stock certificates in order to become a member of a Bank, the Finance Board would be prepared to consider the issue through a waiver request under the Finance Board's existing procedures. In that event, the Finance Board would expect the request for a waiver to demonstrate that state law allows no alternative but for an insurance company to hold physical stock certificates in order to become or remain a member of the Bank System.

When it issued the proposed rule, the Finance Board contemplated that Bank stock would have been traded among

members on a regular basis, which would have presented a more compelling need for a Bank to retain an outside source to act as the transfer agent for its stock. As discussed below, the final rule has eliminated the provisions of the proposed rule that would have required Bank stock to be traded among members, as well as between the Bank and its members, at a negotiated price. Thus, as in the past, the overwhelming majority of stock transactions will be between a Bank and a member. As such, the Finance Board does not anticipate that the need for an outside transfer agent under the new capital structure than will be materially greater than under the current capital structure. The Finance Board anticipates further rulemaking in the first quarter of 2001 on capital issues, and parties who can demonstrate why the Banks would still need to retain an outside source to perform the transfer agent functions in the absence of a trading market for the Bank stock will be able to address the issue at that time.

Proposed § 931.2(b) would have required each Bank to determine the initial method of distribution of its stock in a manner that is fair and equitable to all eligible purchasers. The proposed rule expressly allowed the Banks to conduct the initial issuance through an exchange or conversion but did not mandate either approach. In addition, the proposal would have allowed a Bank to distribute its then-existing unrestricted retained earnings as shares of Class B capital stock.

These provisions are being adopted in the final rule substantially as proposed. A Bank commenter recommended that this section be amended to clarify that a Bank may distribute retained earnings that are unrestricted at the time of conversion in the form of shares in a subclass of Class B stock, in addition to shares of Class B stock as the proposed rule provides. Such action would be authorized under the rule as written so no change to the rule is required.

Proposed § 931.2(c) would have required that a Bank issuing capital stock as a requirement of membership and as a requirement for conducting business with the Bank could do so only in accordance with proposed § 931.7 and § 931.8, respectively. The final rule has replaced those two provisions with a new provision that addresses the minimum investment that each member must maintain in the stock of the Bank, and thus has deleted the substance of § 931.2(c) from the final rule. The provisions regarding the minimum investment are discussed under § 931.3, below.

Proposed § 931.2(d) would have prohibited a Bank from issuing stock to a member or group of affiliated members if the issuance would result in such member or group of affiliated members owning more than 40 percent of any class of the outstanding capital stock of the Bank. Section 931.9 of the proposed rule separately would have limited the amount of stock that any one member, or group of affiliated members, could own to 40 percent of any class of the outstanding capital stock of the Bank. Several commenters suggested that the effect of that provision would be to limit the amount of advances that large members could obtain because they would be barred from purchasing the necessary additional stock that would be required to support any new advances. Other commenters suggested that the provision would effectively require small members to purchase additional stock to support the activities of large members of a Bank. A number of commenters requested that the Finance Board address how the provision would be applied to members that exceeded the 40 percent cap through no action of their own, such as if one or more larger members were to withdraw from the Bank.

The Finance Board agrees the concentration limit could have hampered some large members' access to Bank advances and other activities. The Finance Board further believes that concerns that one member or group of members may exert undue influence over a Bank can be addressed adequately by limiting the voting rights of large members, which the final rule does by retaining the current statutory cap on the number of shares that any one member may vote in an election of directors. Because the existing limits on voting rights will remain in place in the final rule, the proposed stock ownership limits are no longer necessary and have been deleted from the final rule. The application of the voting limits under the new capital structure is discussed separately under the explanation of the amendments to part 915 of the Finance Board's regulations.

Minimum investment. Section 931.3 of the final rule addresses the minimum investment in capital stock that is required of each Bank member. This section of the final rule replaces two separate provisions of the proposed rule, §§ 931.7 and 931.8, which addressed ''membership investment'' and ''activity-based'' stock purchase requirements, respectively. Each of those provisions included limitations based on the concept of a Bank's ''operating capital ratios'' (*i.e.*, total and risk-based capital ratios somewhat higher than the regulatory minimums). Section 931.7 of the proposed rule would have allowed a Bank to require each member to invest in Class A stock as a condition to being a member of the Bank, but would have required that the Bank also allow each member the option of purchasing a lesser proportional amount of Class B stock. If the Bank were at or above either of its operating capital ratios, the proposed rule would have barred the Bank from requiring its members to purchase any additional amounts of Bank stock, though it would have permitted a Bank to assess a membership fee in lieu of a mandatory stock investment. Section 931.8 of the proposed rule would have allowed a Bank to require its members to purchase an amount of Class A or Class B stock as a condition to doing business with the Bank. The proposed rule also would have allowed a Bank to contract with a member for the purchase of stock on a future date (as a means of satisfying an activity-based stock purchase requirement), required that the amount of Class B stock be based on the risk characteristics of the underlying assets, and prohibited a Bank from restricting a member's ability to sell stock that it had purchased under this requirement. As with the membership requirement, if a Bank were at or above either of its operating capital ratios, the proposed rule would have barred the Bank from requiring its members to purchase any additional Class B stock based on the business conducted with the Bank.

Nearly all commenters who addressed the provisions of the proposed rule relating to operating capital ratios recommended that those provisions be eliminated from both the membership and activity-based stock purchase requirements, or that they be revised to establish an operating capital range, rather than a fixed percentage. A principal concern was that the operating capital ratios would cause inconsistent stock ownership and/or stock purchase requirements among members and that they may not be effective in preventing the Banks from becoming overcapitalized. By imposing such limits on stock issuance on a Bank that had reached its operating capital ratios, the proposed rule also would have effectively capped the amount of capital that the Bank would have, which a number of commenters suggested was not consistent with the safe and sound operation of the Banks.

The Finance Board continues to believe that operating capital ratios are a valid business concept that should be retained in the final rule, but has reconsidered the implementation of the concept based on the comments. The

Finance Board believes that operating capital ratios are more appropriately described as a risk management tool for establishing capital levels at which the Banks intend to operate, rather than as a separate regulatory capital requirement for which the Finance Board would impose sanctions if the Banks were to operate at different levels. Accordingly, the final rule deletes from the capital regulation any reference to the operating capital ratios, as well as any reference to limits on a Bank's ability to issue capital stock once it has reached its operating capital ratios. Instead, the final rule includes an amendment to § 917.3 that requires each Bank to include as one element of its risk management policy the total and risk-based capital levels at which the Bank intends to operate. In effect, the board of directors of each Bank must establish the capital ratios or ranges at which it intends the management of the Bank to operate. If the Bank were to operate at capital levels that were materially above or below the operating capital ratios established as part of the risk management policy, the Finance Board would address the variance through the examination and supervision process. The Finance Board expects that the board of directors of each Bank will monitor the Bank's capital level to ensure that management complies with the capital ratios established by the board of directors.

A number of commenters who addressed the membership investment provisions of the proposed rule objected to requiring the investment to be in Class A stock, with the member having an option to invest a lesser amount in Class B stock. Nearly all of the commenters who addressed the use of a membership fee in lieu of a minimum investment in the stock of the Bank opposed the concept, though at least one commenter advocated allowing a Bank to assess a fee in addition to a minimum investment in Bank stock. As discussed in the proposed rule, because the operating ratio provisions would have precluded a Bank from issuing additional stock to certain of its members in certain circumstances, the Finance Board believed it appropriate to allow the Bank to assess an annual membership fee on those members in lieu of the stock purchase that otherwise would have been required. In part, these provisions were intended to avoid an accumulation of excess capital at the Banks. Because the Finance Board has eliminated the concept of operating capital ratios from the final rule, there no longer is any need to permit membership fees to be assessed in lieu of mandatory stock purchases. As described below, § 931.3 of the final rule requires each Bank to establish a minimum investment in Bank stock as a condition of membership, as well as a condition of doing business with the Bank, but leaves to the individual Bank how the minimum investment is to be structured. Accordingly, the final rule no longer requires that the membership investment be in Class A stock, with an option for the member to invest a lesser amount in Class B stock, and does not authorize a membership fee in lieu of the minimum investment. This revision to the proposed rule would not prevent a Bank from assessing a fee on members in other contexts, but it would bar the assessment of a membership fee in any form.

The activity-based stock purchase requirements of proposed § 931.8 prompted numerous objections that they would have barred a Bank from requiring its members to continue to hold Bank stock that had been purchased to support a particular business activity, such as advances, with a Bank. Many of the commenters suggested that the Banks be allowed to mandate a ''buy-and-hold'' requirement as part of any activity-based stock purchase requirement. Those commenters contended that allowing a member to sell Bank stock purchased to support a particular activity would make it more difficult for Banks to meet their risk-based capital requirements. Commenters also expressed concern that the proposed rule would threaten the cooperative structure of the Bank System by separating stock ownership from the business that the members conduct with the Banks, and would move the Banks toward a corporate form of business.

A number of commenters advocated retaining the current activity-based stock purchase requirement (*i.e.*, a member must own Bank stock at least equal to 5 percent of its advances), arguing that such a formula would provide adequate capital to cover the credit, market, and operational risks associated with advances. One commenter supporting that approach argued that any capital supporting an advance is ''permanent'' because the member cannot redeem the stock while the advance is outstanding, and that either Class A or Class B stock could be used as ''permanent'' capital for advances. The Congress, however, has spoken definitively on these issues and the Finance Board is not at liberty to consider Class A stock as permanent capital. The risk-based capital requirements for a Bank, *i.e.*, the capital required for credit and market risk, may be satisfied only with ''permanent capital,'' which is defined to include only the amounts paid in for Class B stock plus a Bank's retained earnings (determined in accordance with GAAP). The totality of the GLB Act definitions make it clear that Class A stock cannot lawfully be used to satisfy a Bank's risk-based capital requirements, even if it were to be held for the duration of an advance. With regard to the contention that a Bank should be allowed to retain the ''5 percent of advances'' requirement from prior law, it would be possible under the final rule for a Bank to do so, provided that the amount of capital generated by that requirement would be sufficient for a Bank to meet its total and risk-based capital requirements, both for its outstanding advances as well as for the other assets on the balance sheets of the Banks. As discussed below, the determination of how to structure the minimum investment is left to the individual Banks under the final rule.

The final rule includes, in § 931.3, much of the substance of the proposed membership and activity-based stock purchase requirements, albeit with a number of revisions and additions that conform the final regulation more closely to the statutory requirements. Consistent with a number of comments, § 931.3(a) of the final rule mandates that each Bank shall require each member to maintain a ''minimum investment'' in the stock of the Bank. The term ''minimum investment'' includes whatever amount of Bank stock an institution is required to purchase in order to become a member of a Bank, as well as whatever amount of Bank stock a member is required to purchase in order to obtain an advance or to conduct any other business activity with the Bank. The GLB Act expressly requires each member to maintain a minimum investment in the stock of its Bank, and requires the manner for determining the amount of the minimum investment to be described in the Bank's capital plan. The GLB Act does not speak in terms of the minimum investment being structured as separate membership and activity-based components. The GLB Act does, however, require the amount of capital to be generated by the minimum investment to be sufficient to allow the Bank to comply with its total and risk-based capital requirements, and expressly authorizes a Bank to base the minimum investment on a percentage of a member's assets and/or on a percentage of a member's outstanding advances, all of which suggest that under the new capital structure (as under the existing structure), the minimum investment must encompass

both a membership component and an activity component.

As a fundamental matter, the Banks are cooperatives, which means that the capital to support the business of the Banks must be supplied by the members of the cooperative. If an institution becomes a member of a Bank, it has immediate access to all of the products and services of the Bank even if it does not immediately take advantage of them. Nonetheless, the Bank stands ready to provide advances and other services to the new member and has an infrastructure in place to provide those services. Both the liquid assets that a Bank maintains in order to provide services to its members, as well as parts of the infrastructure of the Bank (i.e., tangible assets) that enable it to provide those services, are assets against which the Bank is required to maintain some amount of permanent and total capital. Thus, even a non-borrowing member benefits from the availability of these services and should be required to purchase some amount of both Class A and Class B stock to support the capital requirements associated with the Bank serving as a standby lender for the member. Indeed, as a number of commenters contended, an institution cannot become a member without having invested some amount in the stock of the Bank. Because a Bank must maintain permanent capital against assets that benefit non-borrowing members, the Finance Board believes that the most appropriate reading of the GLB Act is to require each member to maintain an investment in Bank stock (including Class B stock) regardless of whether it has any business outstanding with the Bank.

Section 931.3(a) of the final rule also requires each Bank to require each member to maintain a minimum investment in Bank stock as a condition to transacting business with the Bank or obtaining advances or other services from the Bank. Under the GLB Act capital provisions, a Bank cannot make an advance or obtain Acquired Member Assets (AMA) unless it has in place the permanent and total capital required to meet the risk-based and leverage capital requirements associated with those assets. Because of that requirement, the Finance Board believes that the concept of a ''minimum investment'' must include the capital stock that is required to support the risks that a member's business transactions place on the balance sheet of the Bank. Section 931.3(a) of the final rule provides that the specifics of how a ''minimum investment'' is to be calculated is to be determined by each Bank as part of its capital plan, which reflects the requirements of the GLB Act. That provision also provides expressly that each Bank must require its members to maintain its minimum investment in Bank stock for as long as it remains a member and for as long as it engages in any business transaction with a Bank against which the Bank is required to maintain capital. Thus, for instance, a member that is required to purchase Bank stock as a condition of obtaining an advance or engaging in AMA transactions with the Bank, must continue to hold that stock for so long as the corresponding asset remains on the Bank's balance sheet.

Section 931.3(b) of the final rule provides that a Bank may establish the minimum investment required of each member as a percentage of the total assets of the member or as a percentage of the advances outstanding to the member, or based on any other provisions approved by the Finance Board as part of the Bank's capital plan. That provision of the final rule reflects exactly the requirements of the GLB Act. Because the business transactions and services that the Banks provide to their members are not limited to advances, the Finance Board also has included in § 931.3(b) of the final rule a provision allowing the Banks to establish a minimum investment as a percentage of any other business activity conducted with the members, which would include AMA transactions. In addition, the final rule provides expressly that the above bases for determining a minimum investment are not mutually exclusive and that a Bank may use any one or more of them in any combination as the basis for determining the minimum investment required of the members. Accordingly, although the final rule allows the Banks several options for structuring the minimum investment that is required of all members, the Banks must require the members to purchase some amounts of stock in order to conduct business with the Banks.

Section 931.3(c) of the final rule provides that a Bank may require a member to satisfy the minimum investment through the purchase of either Class A or Class B stock, or through the purchase of any one or more combinations of Class A and Class B stock that are authorized by the board of directors of the Bank. That section also provides that a Bank may establish a lower minimum investment for members that invest in Class B stock than for those that invest in Class A stock, provided that the reduced investment remains sufficient for the Bank to remain in compliance with its minimum capital requirements. As discussed previously, even if a member does not borrow or otherwise engage in any business with its Bank, the Bank has to maintain assets and infrastructure to allow it to stand ready to do business with such members, and all of those assets require some amount of permanent capital and total capital to comply with the requirements of the GLB Act. The same is true with regard to members that borrow from or otherwise do business with the Banks, except that the linkage between the Bank assets that are created through such business dealings and the capital requirements is more apparent. In either case, if a Bank could not require its members to purchase some amount of Class A stock and some amount of Class B stock, it could not possibly comply with the capital requirements of the GLB Act. In theory, a Bank could rely on retained earnings to provide the permanent capital to allow it to comply with its risk-based capital requirements but, as a practical reality, no Bank has or is likely to have in the near term sufficient retained earnings to allow that to occur. If the language of the GLB Act were read to provide each member with an option to purchase either Class A or Class B stock, a Bank could not ''ensure'' that the minimum investment it had established would provide sufficient capital for the Bank to comply with the GLB Act capital requirements. The Finance Board believes that the most appropriate way to construe the GLB Act is to allow the members the option of choosing from whatever combinations of Class A and Class B stock have been authorized by the board of directors of the Bank as a means of satisfying the minimum investment.

Section 931.3(d) provides that each member of a Bank shall maintain an investment in the stock of its Bank in an amount that is sufficient to satisfy the minimum investment requirement established by the Bank's capital plan. This reflects provisions in the GLB Act that require each member to comply with the minimum investment established by the Bank's capital plan. It also addresses concerns expressed by a number of commenters that certain types of institutions, such as commercial banks, which are authorized under state law to invest in Bank stock only to the extent that the investment is required as a condition of membership, might lack the legal authority to invest in Bank stock if the investment were not required as a condition of membership or as a condition of obtaining services from the Bank.

The final rule does not include the provision formerly in § 931.8(c) of the proposed rule, which would have

required that the amount of Class B stock that a member must purchase be based on the risk characteristics associated with the type and duration of asset to be acquired by the Bank as a result of the particular transaction with that member. In order to satisfy the requirement in the final rule that the minimum investment shall be sufficient to ensure that the Bank remains in compliance with all of its minimum capital requirements, the Banks may well have to take into account the risk characteristics associated with particular transactions with members in determining what investment to require for such transactions. Under the final rule, however, that matter is left to the board of directors of each Bank to resolve, through the capital plan.

Dividends. As discussed previously, the Finance Board has deleted from the final rule the provisions of the proposed rule that would have required that the Class A stock pay a stated dividend that would have a priority over the dividends on the Class B stock. The final rule also deletes all of proposed § 931.4(b), which would have required the capital plan of each Bank to address certain issues associated with the stated dividend and the priority for the Class A stock, and all of proposed § 931.4(c), which separately addressed the dividends on the Class B stock. As previously discussed, many commenters recommended eliminating the stated dividend and the dividend priority for Class A stockholders, citing potential tax consequences to the members. Several commenters also suggested that each Bank be permitted to decide the dividend structure and preferences, if any, to be assigned to the classes of stock that it issues. The Finance Board agrees with those comments, and has removed those provisions from the final rule for those reasons. Thus, the final rule provides simply that the capital plan may establish different dividend rates or preferences for each class or subclass of Bank stock, which effectively leaves to the board of directors of each Bank the decision as to how to structure dividends to the members. To the extent that the dividend structure adopted by a Bank might unfairly favor one class of stockholder over another, the Finance Board would be prepared to address those issues as part of the approval process for the capital plans. The Finance Board expects that it will not approve a capital plan if it would allow for the holders of either stock class to be treated unfairly. These provisions were included in the proposed rule to preclude the possible manipulation of the Class A dividend by and for the benefit of Class B shareholders, who may well have a greater influence on the Bank's dividend policies than the Class A shareholders. The Finance Board continues to believe that it is important to ensure that this does not happen, but believes that the capital plan review process is the appropriate means to do so.

One commenter recommended that the final rule bar a Bank from paying a dividend if it is not in compliance with its capital requirement or would fall out of compliance as a result of paying the dividend, explaining that without such a provision a Bank could continue to pay dividends in order to forestall stock redemptions, notwithstanding its lack of sufficient capital. The GLB Act expressly precludes a Bank from distributing its retained earnings unless it would continue to meet all applicable capital requirements following the distribution. Section 2A(a)(3)(A) of the Bank Act also provides that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. 12 U.S.C 1422a(a)(3)(A). The minimum capital requirements established by the GLB Act advance the safety and soundness of the Bank System by ensuring that the Banks have sufficient capital to conduct their business. The Finance Board believes that a Bank that fails to maintain the minimum amounts of capital required by the GLB Act would be operating in an unsafe and unsound condition, which would require remedial action by the Finance Board. Although it was never the intent of the Finance Board to suggest that a Bank could pay dividends while not meeting its minimum capital requirements, the Finance Board sees merit in explicitly stating so in regulation and has added such language to the final rule.

Section 931.4(a) of the proposed rule also had provided that any member, including a member withdrawing from the Bank System, that owns Class A or Class B stock, or both, would be entitled to receive dividends declared on its stock for as long as it owned the stock. The final rule retains that provision. Section 931.4(a) of the proposed rule further provided that any dividends on the Class B stock shall be payable only from the net earnings or retained earnings of the Bank, determined in accordance with GAAP and was silent on the sources available for dividends on Class A stock. The final rule includes a similar provision, providing that a Bank may pay dividends only from its previously retained earnings or its current net earnings. That language simply restates the existing statutory requirements and applies equally to dividends on Class A and to Class B stock. 12 U.S.C 1436(a). The final rule also provides that a Bank shall declare and pay dividends only in accordance with its capital plan. As previously discussed, certain amendments made by the GLB Act may limit the ability of a Bank to pay dividends on its Class A stock from retained earnings. Section 6(h)(1) of the Bank Act, 12 U.S.C. 1426(h)(1), *as amended,* provides that the ''holders of the Class B stock * * * shall own the retained earnings, surplus, undivided profits, and equity reserves * * * of the Bank.'' The following paragraph of the statute limits that ownership interest, providing that a member has no right to receive any portion of the retained earnings, other than through a dividend or a capital distribution. The next paragraph bars a Bank from distributing any of its retained earnings unless it would continue to meet all of its capital requirements following the distribution. Read together, those provisions appear to require that the retained earnings of a Bank are available only for the payment of dividends to the holders of the Class B stock. To allow the retained earnings to be used as a source for dividends on the Class A stock would appear to require a Bank to use the property of one class of stockholders to pay dividends to another class of stockholders, who have been granted no ownership interest in those retained earnings.

Section 16(a) of the Bank Act, 12 U.S.C. 1436(a), provides that ''no dividends shall be paid except out of previously retained earnings or current net earnings.'' That suggests that even if the retained earnings are available only for payment of dividends to the holders of the Class B stock, a Bank could use its ''current net earnings'' as the source for paying dividends on its Class A stock. It appears, however, that under generally accepted accounting principles (GAAP), current earnings are closed to retained earnings at the close of each accounting period, the effect of which is to make current earnings unavailable as a source of dividends. Though it appears unlikely that the Congress considered how creating a property interest in the retained earnings in favor of the Class B stockholders might limit the ability of the Banks to pay dividends on their Class A stock, the language that Congress used places the ownership of the retained earnings with the Class B stockholders. The final rule is silent on this issue. As noted previously, the Finance Board anticipates further

rulemaking in the first quarter of 2001 on capital issues, and believes that the resolution of this issue regarding the source of dividends for the Class A stock should occur after there has been an opportunity for public comment on the issue. To the extent that any Bank intends to submit a capital plan that would call for the payment of dividends on Class A stock, the Finance Board expects that the plan would identify the source for paying such dividends, address the authority of the Bank to pay dividends from that source, and describe how the proposal would be treated under relevant accounting principles.

Some commenters expressed concern that any regulatory limits on dividends may prove troublesome over time, given the potential for increased volatility in reported net income and retained earnings that could result from the implementation of Statement of Financial Accounting Standards No. 133 (SFAS 133), the new GAAP accounting standard for derivatives. One commenter recommended that if the transitory income effects associated with SFAS 133 were to prevent the payment of a dividend, it would be appropriate for the Bank's board of directors to have the authority to declare and pay a dividend from earnings without regard to these transitory SFAS 133 effects. Another commenter expressed concern about the market and income volatility generated by the accounting treatment surrounding mortgage-related options, such as those associated with the Mortgage Partnership Finance (MPF) program. As noted previously, by statute a Bank may pay dividends only from its current earnings or its previously retained earnings. To the extent that these comments suggest that the Finance Board should allow a Bank to pay dividends from some other source, the Finance Board is not prepared to do so. Moreover, the GLB Act requires that in calculating risk-based and total capital, the retained earnings of a Bank must be calculated in accordance with GAAP. The GLB Act also restricts a Bank from making a retained earnings distribution, unless following such distribution the Bank would continue to meet all applicable capital requirements. These statutory provisions, read together, persuade the Finance Board that it should not adopt the suggestions raised by these commenters.

Liquidation, merger, or consolidation. The proposed rule established a priority for Class A shareholders over Class B shareholders, in the event of a liquidation, merger, or other consolidation of a Bank. As previously discussed, many commenters recommended eliminating such a preference in order to avoid creating a taxable event with respect to stock previously issued as dividends when existing stock is converted to Class A stock. The Finance Board has eliminated this provision in the final rule, substituting instead a requirement that the respective rights of Class A and Class B stockholders, in the event that the Bank is liquidated, or is merged or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank.

Transfer of capital stock. Consistent with current practice, the proposed rule would have allowed a member to transfer capital stock only to another member of the Bank or to an institution that is in the process of becoming a member. Unlike current practice, the proposed rule would have required such transfers of stock to be at a price agreed to by the parties, which by implication meant that the price could be below, at, or above the par value of the stock.

Several commenters raised issues with allowing stock transfers to an institution in the process of becoming a member, citing concerns that if it did not become a member, a non-member institution could own Bank stock which would be inconsistent with the GLB Act. To address concerns raised by the commenters, the Finance Board revised the phrase ''institution in the process of becoming a member'' in the final rule to ''institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership.''

Many commenters opposed the trading of Bank stock at a negotiated price among its members. Such trading, it was argued, would require members to hold Bank stock as an available-for-sale asset, which would have to be marked to market. The Finance Board agrees that such problems outweigh the potential benefits of other than par value transfers, at this time, and has thus revised the final rule to require that any transfer of stock among members must be at par value.

Redemption and repurchase of capital stock. Proposed § 931.10 (§ 931.7 in the final rule) set forth requirements for redemption and purchase of capital stock and provided that a member may seek to have the Bank redeem its Class A and Class B stock with six-months and five-years written notice to the Bank, respectively. At the end of the notice periods, the Bank would be required to pay the par value of the stock to the member in cash. The proposal also would have barred a member from having pending at any one time more than one notice of redemption for any class of Bank stock. Several commenters expressed concerns with this restriction, indicating that it would inhibit a Bank's ability to pay stock dividends on Class B stock because a member that did not want to hold stock dividends effectively would be precluded from requesting redemptions. One Bank commenter suggested that, rather than restricting redemption requests, the Bank should be allowed to assess a fee for additional redemption requests. To address this issue, the Finance Board has revised the final rule to bar a member from having more than one notice of redemption outstanding at one time for the same shares of Bank stock. This will allow a member that has submitted a redemption notice for certain shares of stock to file an additional notice for other shares of stock if it receives stock dividends or otherwise is holding excess stock that it desires to have redeemed.

The final rule also clarifies that a member may cancel a notice of redemption if it does so in writing to the Bank, and the Bank may impose a fee (to be specified in the capital plan) on any member that cancels a pending notice of redemption. The requirement that a Bank shall not be obligated to redeem its capital stock other than in accordance with this paragraph also is adopted in the final rule.

Section 931.7(b) addresses repurchase of capital stock, which was referred to in the proposal as purchase of capital stock. Repurchase of capital stock differs from redemption in that it is a transaction that is initiated by a Bank, whereas a redemption of Bank stock is a transaction that is initiated by a member. The proposed rule provided that a Bank, in its discretion, may purchase outstanding Class A or Class B capital stock from its members at any time at a negotiated price. Several commenters expressed concerns about the implications of requiring such transactions to occur at a negotiated price, indicating that such a requirement would effectively prevent a Bank from repurchasing excess Bank stock unless the Bank were willing to pay the price demanded by the member. Several commenters also recommended that a Bank be given the unilateral right to purchase excess stock from any member at par value, so long as the purchase would not result in the Bank's failure to comply with any regulatory capital requirement. One commenter suggested that the Banks be given the

right to purchase Class A shares at par value and Class B shares at book value.

The Finance Board agrees that the proposed rule could make it unnecessarily difficult for the Banks to manage effectively their capital accounts. Accordingly, the final rule authorizes the Banks, in their discretion and without regard to the 6-month and 5-year redemption periods, to repurchase excess stock from their members. As noted previously, the term ''excess stock'' includes any Bank stock owned by a member in excess of the amount that the member is required to own under the minimum investment provisions of the Bank's capital plan. The final rule also addresses an issue raised by the comments by requiring the Banks to provide reasonable notice to any member from which the Bank intends to repurchase excess stock, with the length of such notice being stated in the capital plan. For any such repurchases, the Banks must pay to the members the stated par value of the stock in cash. The final rule also states expressly that a member's submission of a notice of intent to withdraw from membership, or its termination of membership in any other manner, shall not, in and of itself, cause any Bank stock to be deemed excess stock for purposes of this section. That provision reflects a statutory requirement imposed by the GLB Act. 12 U.S.C. 1426(e)(2), *as amended.*

Several Bank commenters recommended that the final rule give the Banks clear discretion to approve or deny a member's request for redemption, so long as the Bank is in compliance with its regulatory capital requirements. It is not apparent from the GLB Act that a Bank would have the authority to deny a redemption request if the capital of the Bank would not become impaired by the redemption or if the Bank would remain in compliance with its regulatory capital requirements following the redemption. Thus, the final rule provides that at the expiration of the six-month or five-year notice period, as applicable, the Bank will be required to pay the par value of the stock to the member in cash, assuming that the capital of the Bank is not impaired, the Bank meets its minimum capital requirements, and the member is not required to hold the stock as a condition of remaining a member or of engaging in any business transactions with the Bank. One commenter recommended that the redemption provisions of the final rule clarify who makes a redemption determination when redemption would cause the Bank to fall below its regulatory capital requirement and whether and under what circumstances a redemption request may be withdrawn. Under the final rule, a member can withdraw a request for redemption at any time prior to the expiration of the applicable notice period, though the Bank may assess a fee on any member that does so. The Finance Board expects that each Bank will monitor its capital levels at all times and will not honor a redemption request if doing so would cause it to fail to comply with any of its capital requirements. How a Bank would address a situation in which multiple members simultaneously submit redemption requests that would cause the Bank to fall below any minimum capital requirement should be addressed in the Bank's capital plan.

One commenter suggested amending this section to clarify that a Bank that is not in compliance with its regulatory capital requirements not be permitted to redeem stock. The final rule precludes a Bank from redeeming or repurchasing any stock if, following the redemption or repurchase, the Bank would fail to meet any minimum capital requirement, or if the member would fail to maintain its minimum investment in the stock of the Bank, as required by § 931.3.

Capital Impairment. The final rule bars a Bank from redeeming or repurchasing any capital stock without the prior written approval of the Finance Board if the Finance Board or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. The proposed rule had included a comparable provision, which would have allowed a Bank to redeem or repurchase stock with Finance Board approval even if the Bank thereafter would fail to meet its minimum capital requirements. The inclusion of the language in the proposed rule that would allow for such transactions with Finance Board approval was inadvertent, and the final rule does not permit such transactions. The final rule also provides that the prohibition on redemption and repurchase will apply even if a Bank is in compliance with its minimum capital requirements, and will remain in effect for however long the Bank continues to incur such charges or until the Finance Board determines that such charges are not expected to continue. As stated in the final rule, the provision more closely tracks the statutory language.

Transition Provision. The proposed rule included a general transition provision in § 932.1 for the Banks to meet the risk-based and leverage capital requirements, as well as a separate transition provision in § 933.3, pertaining to the contents of the capital plans. Section 932.1 of the proposed rule would have required, by a date not later than three years from the effective date of its capital plan, that each Bank have sufficient total capital to meet the minimum leverage capital requirement in proposed § 932.2, and sufficient permanent capital to meet the risk-based capital requirement in proposed § 932.3. The proposed rule also would have mandated that the minimum stock purchase and stock retention requirements of the Bank Act in effect immediately prior to the GLB Act amendments remain in effect until the Bank had issued capital stock in accordance with its approved capital plan, and that each Bank would continue to be governed by certain provisions of the Finance Board's Financial Management Policy (FMP) until the Bank had met the proposed regulatory capital requirements.

One Bank commenter recommended that this provision be amended to clarify that the new minimum stock purchase and retention requirements would not become effective until a Bank had issued all stock under its plan, to allow for issuance of stock in tranches or rounds. A few commenters questioned whether the current leverage limitation, 12 CFR 966.3(a) (65 FR 36290, 36299 (June 7, 2000)), is less flexible than the leverage authority in the GLB Act, and the total capital provision of the proposed and final rule, and requested deletion of § 966.3(a). Section 966.3(a) requires a Bank to hold total assets not in excess of 21 times the total of its paid-in capital stock, retained earnings, and reserves (excluding loss reserves and liquidity reserves for deposits as required by 12 U.S.C. 1421(g)). In addition, that rule provides additional leverage authority by allowing a Bank to have an asset-based leverage of up to 25 to 1 if the non-mortgage assets held by the Bank after deducting the amount of deposits and capital, do not exceed 11 percent of the Bank's total assets. 12 CFR 966.3. Several Banks commented that the existing leverage limit would prevent them from efficiently leveraging the permanent capital base afforded through Class B stock, and that the existing leverage limit is more restrictive than the GLB Act leverage limit otherwise allowed.

The transition provision of the final rule has been clarified in numerous respects to address issues raised by the commenters, as well as other issues. In the final rule, the Finance Board has relocated the general transition provision to § 931.9, and has included a conforming provision in § 933.4 as part of the capital plan requirements. As an

initial matter, the transition provisions of the final rule are keyed to the ''effective date'' of a Bank's capital plan, which is defined as the date on which the Bank first issues any Class A or Class B stock. Prior to the effective date of a Bank's capital plan, the issuance and retention of Bank stock are to be governed by §§ 925.20 and 925.22, which implement the stock purchase requirements of the Bank Act as they existed prior to the GLB Act. As of the effective date of a Bank's capital plan, the issuance and retention of Bank stock shall be governed exclusively by the capital plan for that Bank.

As a general matter, § 931.9(a) of the final rule requires each Bank to comply with the minimum leverage and risk-based capital requirements of §§ 932.2 and 932.3, respectively, as of the effective date of the Bank's capital plan. If a Bank is in compliance with both the leverage and risk-based capital requirements as of the effective date of its capital plan, it shall thereafter be governed exclusively by the provisions of its capital plan and the capital requirements of §§ 932.2 and 932.3. For any Bank that is in compliance with the GLB Act leverage capital requirements as of the effective date, the final rule provides that existing leverage requirements at § 966.3(a) shall cease to apply to that Bank as of that date.

If a Bank will be out of compliance with the GLB Act capital requirements as of the effective date of its capital plan, then § 931.9(b)(1) of the final rule allows the Bank to establish a transition period over the course of which it will come into compliance with the GLB Act capital requirements. Any such transition period must be established as part of the Bank's capital plan and must describe the steps that the Bank plans to take during the transition period to come into compliance with the new capital requirements. The capital plan also must indicate the length of the transition period, which shall not exceed three years from the effective date of the capital plan. During the period of time that the Bank is out of compliance with the GLB Act leverage requirement, the final rule provides that the Bank will remain subject to the existing regulatory leverage requirement established by § 966.3(a). Once a Bank that has been operating under a transition period comes into compliance with the GLB Act leverage capital requirement, it will cease to be subject to the regulatory leverage requirement of § 966.3(a).

Though it is clear that the Congress intended the Banks to have the option of achieving compliance with the GLB Act capital requirements over a period of up to three years from the effective date of the capital plan, there is nothing in the GLB Act to suggest that during any such transition period the existing leverage requirements should cease to apply. The Finance Board believes, as a matter of safety and soundness, that it is essential for the Banks always to be subject to a leverage requirement, and that the transition provision should not be read as authorizing the Banks to operate with no leverage capital requirement for up to three years after the effective date of their capital plans. The Finance Board believes that the best way of assuring continuity between the current regulatory leverage requirement and the GLB Act leverage requirements during any transition period is to link the termination of the existing leverage requirements to the commencement of the new leverage requirements. In effect, the final rule leaves to the board of directors of each Bank the ability to determine the date on which the existing leverage requirements in § 966.3(a) will cease to apply to that Bank. Banks that will achieve compliance with the GLB Act capital requirements immediately as of the effective date of their capital plans will no longer be subject to the current regulatory leverage limits. Banks requiring or desiring additional time to come into compliance with the GLB Act leverage requirement will have certainty under the final rule as to what leverage requirements apply to the Bank during the transition period.

Section 931.9(a) of the final rule separately requires each member to comply with the minimum investment established by the capital plan of its Bank as of the effective date of that plan. As was proposed, prior to the effective date of the Bank's capital plan the members will be required to purchase and hold Bank stock in accordance with §§ 925.20 and 925.22 of the Finance Board's regulations, which implement the stock purchase requirements of the Bank Act as in effect prior to the GLB Act.

Although the final rule generally requires members to meet the minimum investment as of the effective date of the Bank's capital plan, it also authorizes a Bank to include in its capital plan a transition provision that would allow members up to three years to purchase the amount of Bank stock that is required by the capital plan. The capital plan shall specify the length of any transition period established for the members and shall describe the actions that the members must take during the transition period in order to come into compliance with the minimum investment provisions of the capital plan. Consistent with the GLB Act, any such transition period will apply only to those institutions that were members of the Bank as of November 12, 1999, which was the date of enactment of the GLB Act, and whose investment in Bank stock as of the effective date is less than the amount required by the capital plan for that Bank. Any institutions becoming members of a Bank after that date will be required to conform their Bank stock ownership to the amounts required by the capital plan as of the effective date of the capital plan. Similarly, any members that, as of the effective date, own stock in excess of the amount required by the capital plan, will be required to comply with the minimum investment established by the plan from that date forward. The final rule expressly authorizes the Banks to require their members that are subject to any such transition provision to purchase additional shares of Bank stock in increments over the course of the transition period.

The final rule includes two separate provisions that relate to new members and to new business, respectively. Any new members, *i.e.,* those institutions that became members after November 12, 1999 but prior to the effective date of the capital plan, as well as those institutions that become members after the effective date of the capital plan, will be required to comply with the minimum investment requirements of the Bank's capital plan as of the effective date of the plan, or upon becoming a member, as appropriate.

Finally, § 931.9(b)(3) requires a Bank's capital plan to require any member that obtains an advance or other services from the Bank, or that initiates any other business activity with the Bank against which the Bank is required to hold capital after the effective date of the capital plan to comply with the minimum investment specified in the Bank's capital plan for such advance, service, or activity at the time the transaction occurs. The Finance Board views the transition provisions of the GLB Act as authorizing the Banks to establish a period of time during which they, and their members, may increase their existing capital, or their existing investment in Bank stock, to the levels required by the GLB Act amendments. Thus, the transition provision assures that neither the Banks nor their members will be required to capitalize their existing business, *i.e.,* the business existing as of the effective date, in accordance with the GLB Act requirements unless the Banks affirmatively decide to do so. For business transactions that are undertaken after the capital plans take

effect, however, there is no need for a transition period because those transactions never would have been subject to the old capital rules. Moreover, construing the transition provisions as applying to transactions that are initiated after the new capital structure takes effect would pose the risk that the Banks could have up to three years during which to place assets on their books that would not be supported by adequate capital, a risk the Finance Board is not prepared to authorize.

F. Part 932—Federal Home Loan Bank Capital Requirements

Overview. As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board, in developing the proposed risk-based capital requirements, drew from and expanded upon work done by the Basle Committee on Banking Supervision (BCBS), other federal financial regulators, the Office of Federal Housing Enterprise Oversight (OFHEO), which supervises the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), and other sources as well as the work done in developing the Finance Board's Financial Management and Mission Achievement (FMMA) rule proposal. *See* 65 FR at 43410–11, 43419–34 (July 13, 2000). The Finance Board has made changes in the final rule to refine and clarify its risk-based capital requirement further, although the basic framework remains the same as in the proposal. These changes, which are discussed in more detail below, were based on comments received as well as additional work done by the Finance Board's staff. Changes were also made in the final rule to recognize that, given changes required by SFAS 133, derivative contracts can no longer be considered solely off-balance sheet items. In the final capital rule, derivative contracts are, therefore, referred to and addressed as transactions distinct from assets or off-balance sheet transactions. The Finance Board also addresses the comments received on the risk-based capital requirements in its discussion below of each individual section of these requirements.

Section 932.1—Risk Management and Former Transition Provision

As previously discussed, proposed § 932.1 contained the transition provision for meeting the risk-based and total capital requirements. The transition provisions for the capital plans and the minimum capital requirements have been consolidated into a single section, § 931.9, in the final rule. Proposed § 932.1(c), under which the risk management provisions of the FMP would have ceased to apply to a Bank at the end of any transition period, has been eliminated from the consolidated transition requirements. The Finance Board has reconsidered the proposal and has determined that it would be more prudent to grant relief from any remaining FMP requirements at the time each Bank's capital plan is approved. This would allow the Finance Board to consider the specifics of each capital plan, the general economic conditions and any other factors that could affect a Bank's future operations and ability to fulfill its mission, before determining whether any part of the FMP should continue to apply. The comments received on the transition provision for the minimum capital requirements are addressed in the **SUPPLEMENTARY INFORMATION** section discussion of § 931.9.

In addition to the transition provision, proposed § 932.1 contained a requirement that before a Bank's capital plan could take effect, the Bank would have to obtain Finance Board approval of its internal market risk model or internal cash flow model and for the risk assessment procedures and controls that would be used to manage the Bank's credit, market and operations risk. An adequate internal model must be developed and approved before the risk-based capital requirements—a key component underlying the new capital structure—can be calculated.[6] At the same time, adequate internal controls for recognizing and managing the risks faced by the Banks will be an important factor in the successful implementation of a new capital system in which the Banks' required capital levels are closely tied to their risk profiles. No comments were received on the approval requirement in proposed § 932.1(b). Accordingly, the Finance Board continues to view an approved internal market risk or cash flow model and adequate internal risk management controls as necessary prerequisites for implementation of the Banks' capital plans and has adopted this requirement without change in § 932.1 of the final rule.

Section 932.2—Total Capital Requirement

Proposed § 932.2 set forth the minimum total capital leverage requirement contained in the Bank Act, as amended by the GLB Act. 12 U.S.C. 1426(a)(2). Proposed § 932.2(a) would have required a Bank to maintain total capital equal to no less than four percent of its total assets, where total capital was computed without regard to the weighting factor required by the GLB Act and described in proposed § 932(b). This weighting factor would have required a Bank to multiply the permanent capital component of its total capital by 1.5. (Permanent capital is defined to include the paid-in value of Class B stock and retained earnings calculated in accordance with GAAP. 12 U.S.C. 1426(a)(5).) The provision, consistent with the GLB Act, further would have mandated that a Bank's total capital, computed using the weighting factor, could not have been less than five percent of its total assets. In the proposed rule, the Finance Board also would have reserved the right to require a Bank to have and maintain total capital in amounts above the minimum required levels if warranted by safety and soundness concerns. The proposed provision reserving this authority was substantively the same as the provision contained in proposed § 932.3 concerning the minimum risk-based capital requirement.

The Finance Board received several comments on proposed § 932.2, but for the reasons discussed below has not changed the provision in response to those comments and is, therefore, adopting § 932.2 substantially as proposed, with certain technical changes. The requirement describing the weighting factor has been revised to clarify how the weighting factor is applied, and the provision concerning the Finance Board's right to require a Bank to hold total capital above the minimum levels has been revised to conform to the substantively similar provision in § 932.3 of the final rule.

One commenter requested clarification as to whether total capital had to be calculated in accordance with GAAP. The commenter believed that implementation of SFAS 133 as part of GAAP would result in a Bank's assets being artificially ''grossed up'' because unrealized gains on certain derivative contracts would have to be recorded on a Bank's balance sheet as assets. The commenter urged the Finance Board to allow total capital and the minimum leverage ratios to be calculated without taking account of these unrealized gains on derivative contracts. However, the GLB Act requires that when deriving permanent and total capital, ''retained earnings'' must be calculated in accordance with GAAP. 12 U.S.C. 1426(a)(5)(A)(ii). By extension, the valuation of all assets and liabilities,

[6] As adopted in the final rule, § 932.5 allows each Bank to determine market risk capital charges using an approved internal market risk model or internal cash flow model.

upon which the calculation of retained earnings is based, would likewise have to conform with GAAP. The requested change, therefore, is not consistent with the requirements of the GLB Act. Further, the Finance Board believes that it would undermine the efficacy of the minimum total capital ratios as a regulatory tool if the total asset component (*i.e.*, the denominator) of the minimum total capital ratios were to be calculated on a different basis than the total capital component (*i.e.*, the numerator). Thus, no change in the final rule has been made in response to this comment.[7]

One commenter also requested clarification of what safety and soundness concerns may prompt the Finance Board to require a Bank to hold total capital above the minimum required level. The primary duty of the Finance Board is to ensure that the Banks operate in a ''financially safe and sound manner.'' 12 U.S.C. 1422a(a)(3)(A). The Bank Act has long provided the Finance Board or its predecessor agency the authority to take actions to carry out that duty and other responsibilities under the Bank Act. 12 U.S.C. 1422b. Section 932.2(c) of the final rule is consistent with the duties and authority of the Finance Board under the Bank Act and will be implemented as is necessary and authorized to carry out those duties. However, as explained more fully below in the discussion of the Minimum Risk-Based Capital Requirement, the Finance Board expects that the authority granted under this provision rarely will be used, but nonetheless believes that the provision is an important safeguard measure in case unforeseen events result in anticipated or actual impairment of a Bank's capital.

Section 932.3—Risk-Based Capital Requirement

Proposed § 932.3 would have required each Bank to maintain at all times an amount of permanent capital equal to at least the sum of the Bank's credit, market and operations capital risk requirements. The proposed rule also provided that the Finance Board for reasons of safety and soundness could require a Bank to hold a greater amount of permanent capital than the required minimum amount.

The Finance Board received a number of general comments on the risk-based capital requirement. Many commenters believed that the paid-in portion of Class A stock should be considered permanent capital for purposes of fulfilling some aspects of the risk-based capital requirement. Other commenters felt that, overall, the risk-based capital charges were too high and would put the Banks at a competitive disadvantage to Fannie Mae and Freddie Mac. One commenter requested that the Finance Board delineate more clearly the conditions under which it would require a Bank to hold additional permanent capital and to clarify whether Finance Board staff could order such an action. Another commenter requested clarification concerning the risk weighting that would be applied to unrealized gains held as assets for risk-based capital purposes. The Finance Board has considered all comments received on the minimum risk-based capital requirements and, for the reasons discussed below, is adopting § 932.3 substantially as proposed.

One Bank and a number of its members argued that, because Class A stock cannot be redeemed if the Bank is operating below its minimum capital requirements, Class A stock should be considered permanent capital, thus suggesting that the Finance Board allow the paid-in value of Class A stock to be used to meet some portion of the minimum risk-based capital requirement. The Finance Board believes that such a change would be inconsistent with the GLB Act. The term ''permanent capital'' is specifically defined by the statute to include ''the amounts paid for the [C]lass B stock; and the retained earnings of the [B]ank (as determined in accordance with generally accepted accounting principles).'' 12 U.S.C. 1426(a)(5)(A). As already addressed in this **SUPPLEMENTARY INFORMATION** section in the discussion of § 931.3, the Congress has spoken definitively on these issues and the Finance Board is not at liberty to consider Class A as permanent capital. Also as previously discussed, the risk-based capital requirements for a Bank may be satisfied only with permanent capital. 12 U.S.C. 1426(a)(3). The totality of the GLB Act definitions make it clear that Class A stock cannot lawfully be used to satisfy a Bank's risk-based capital requirements.

Some commenters also urged the Finance Board to allow Banks to apply at least some portion of the paid-in value of Class A stock against the operations risk capital charge because, unlike the credit and market risk requirements, an operations risk requirement was not specifically mandated by the GLB Act. However, as addressed elsewhere in this **SUPPLEMENTARY INFORMATION** section, the Finance Board considers an operations risk charge to be an integral part of the risk-based capital requirement. Further, as just discussed, by statute, Class A stock is not suitable risk-bearing capital for credit and market risk. Consistent with this approach, the Finance Board continues to believe that only permanent capital should be held against the operations risk requirement, which, along with the credit and market risk requirements, forms the overall risk-based capital requirement.

More generally, with regard to the magnitude of the risk-based capital charges, estimates by the Finance Board staff indicate that the total risk-based capital charges will not be onerous to the Banks as some commenters have suggested, given the Banks' current balance sheets and risk profiles. Even estimates of the market risk capital charges produced by the Banks' consultant, which involved stress scenarios that would be more rigorous than those required under the proposed rule, did not suggest that the capital requirements being adopted here would be unreasonable. Specifically, the Finance Board anticipates that at least at the time of implementation of the capital plans, the risk-based capital requirement for all Banks will be below the minimum total capital leverage requirements set forth in the GLB Act. More importantly, as addressed more fully in the separate credit, market and operations risk sections, the Finance Board believes that the approaches adopted for calculating individual risk-based charges are reasonable, given available information and the technical capabilities of the Banks. Overall, the Finance Board believes that the risk-based capital charges will adequately reflect the risks faced by the Banks.

In addition, as discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board considered all aspects of OFHEO's proposed risk-based capital rule in developing the proposed rule, as well as in developing the final rule. The GLB Act requires the Finance Board to give due consideration to the OFHEO capital rule in developing the market risk

[7] A few commenters, also citing the effects of SFAS 133, urged the Finance Board to allow a Bank's required payments to the RefCorp and to the Affordable Housing Program (AHP) to be assessed based on ''economic earnings'' rather than GAAP earnings. The Finance Board has also received a request for a regulatory interpretation that seeks to reduce the potential effects of SFAS 133 on earnings calculations used for certain regulatory purposes. That request, which raises a number of concerns, including some similar to those discussed above with regard to calculating total capital, is now being reviewed by Finance Board staff. The issue of whether the Finance Board should authorize the Banks to calculate their RefCorp and AHP payments by using non-GAAP earnings was not addressed in the proposed rule. The Finance Board, therefore, declines to implement any rule changes to address the RefCorp and AHP payments issue at this time.

component of the risk-based capital requirement for the Banks, but nothing in the GLB Act requires the Finance Board to defer to the OFHEO regulation, either with regard to the market risk or other components of this rule. *See* 65 FR at 43426–27 (July 13, 2000); *Am. Fed'n of Gov't Employees* v. *Donovan*, 1982 WL 2167 *3 (D.D.C.) (the use of the terms ''due consideration'' in the Service Contract Act of 1965 ''are much more nearly precatory than mandatory [and] have a procedural implication,'' and do not mean ''equivalent to''). Neither does anything in the GLB Act require that the Finance Board's risk-based capital requirements result in the same or similar risk-based charges for the Banks and for Fannie Mae or Freddie Mac. In fact, Congress established a different risk-based capital stress test and different minimum capital levels for the Banks than it did for Fannie Mae and Freddie Mac.[8] *Compare* 12 U.S.C. 1426(a)(2), (a)(3), to 12 U.S.C. 4611, 4612. Nevertheless, the Finance Board does not believe that the capital requirements adopted herein are inconsistent with those governing Fannie Mae or Freddie Mac, after taking into account the differences in the relevant statutes and the businesses of the three GSEs. *See* 65 FR at 43426.

Some commenters requested clarification on certain aspects of the minimum risk-based capital requirement. One Bank urged the Finance Board to specify that, for purposes of the minimum risk-based capital requirement of § 932.3(a), unrealized gains recorded as assets on the Bank's balance sheet should receive a risk-weighting of zero because ''any risks associated with these balances is adequately covered by the [risk-based capital] requirements for credit risk.'' The minimum risk-based capital charge set forth at § 932.3 as adopted is the sum of a Bank's credit, market and operations risk charges calculated in accordance § 932.4, § 932.5 and § 932.6. Contrary to the commenter's request, § 932.3 does not require a charge independent of these components and does not directly assign risk weights to assets. However, by way of clarification, the credit risk capital charge that will be calculated under § 932.4, as adopted herein, will apply to the underlying derivative contract or asset, and there will be no additional credit risk capital charge applied to the associated unrealized gain that is carried on the Bank's balance sheet as an asset. Similarly, when calculating the market risk charge using its approved internal model, a Bank will be expected to ''stress'' the value of the underlying derivative contract or asset only.

Another commenter requested clarification of when and how ''safety and soundness'' concerns may prompt the Finance Board to require a Bank pursuant to § 932.3(b) to increase its permanent capital above the minimum levels mandated by § 932.3(a). The primary duty of the Finance Board is to ensure that the Banks operate in a ''financially safe and sound manner.'' 12 U.S.C. 1422a(a)(3)(A). The Bank Act has long provided the Finance Board or its predecessor agency the authority to take actions to carry out that duty and other responsibilities under the Bank Act. 12 U.S.C. 1422b. Safety and soundness concerns can arise in numerous circumstances and have to be addressed on a case-by-case basis or for the Bank System as a whole. Section 932.3(b) of the final rule is consistent with the duties and authority of the Finance Board under the Bank Act and will be implemented as is necessary and authorized to carry out those duties.

Overall, however, it is highly unlikely that the authority under § 932.3(b) will be used, given the degree of oversight exercised by the Finance Board, the ability of the Banks to make adjustments in their capital plans, the Finance Board's flexibility to make adjustments to the capital requirements, and the presence of backstop provisions in the capital rule, such as the market value of capital test in the market risk capital requirement. Nonetheless, § 932.2(b) of the final rule is an additional safeguard against unanticipated events that could result in anticipated or actual impairment of a Bank's capital. Examples of such events could include a Bank's risk profile evolving in such a way that it is not adequately addressed by the then-current capital requirements, or a Bank's capital plan failing to meet expectations and generate sufficient capital given the risks faced by the Bank.

Section 932.4—Credit Risk Capital Requirement

General. Proposed § 932.4 set forth a general formula for calculating the credit risk capital charge for on-balance sheet assets and off-balance sheet items, including derivative contracts, held in a Bank's portfolio. For an asset or item, the credit risk capital charge would have been equal to the book value of the asset or the credit risk equivalent amount for an off-balance sheet item, multiplied by the appropriate credit risk percentage requirement. The credit risk percentage requirements were provided in four tables. The methodology used in developing the tables was discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. See 65 FR at 43421–24.

The Finance Board received a number of comments about the credit risk capital requirement. Generally, the commenters indicated that the proposed rule showed sophistication in the treatment of credit risk and offered much more detailed credit weightings for various exposure classes, maturities and credit ratings than had ever been offered by other regulators. Commenters did, however, have a number of comments and concerns on specific issues, which are discussed in detail below.

One general concern noted was that the proposed rule failed to capture the correlation between credit and market risk. Under the rule as proposed, the Banks would have been required to determine their credit and market risk requirements separately based upon different historical stress events. This approach is equivalent to assuming that the risks are highly and positively correlated, because the historical stress periods for each of the two risks are treated as if they coincide, regardless of whether they do in fact coincide. The Finance Board believes that this assumption is prudent. The Finance Board notes that there is research that the correlation in stress events (extremes) between market and credit risk is positive. *See* Mark Carey, ''Dimensions of Credit Risk and Their Relationship to Economic Capital Requirements, *to be published in Prudential Supervision: What Works, and What Doesn't,* Frederic S. Mishkin, ed. (NBER and UC Press, 2001). As the commenters noted, this approach ensures that any estimation bias associated with overstating the correlation of credit and market risk during stress periods will result in capital charges that are conservative rather than deficient. From a safety and soundness perspective, the Finance Board believes this conservative approach is reasonable at this time and is consistent with the OFHEO proposed rule on risk-based capital.[9] Further, although a joint estimation of the credit and market risk requirements would seem more appealing theoretically in

[8] For example, the GLB Act requires that the Finance Board develop a stress test that rigorously tests for changes in interest rates, interest rate volatility and changes in the shape of the yield curve, while the statutory requirements governing Fannie Mae and Freddie Mac set forth specific scenarios for downward and upward shocks in interest rates.

[9] Because the OFHEO model examines both an upward and downward interest-rate shock, but with each subject to the same benchmark credit loss scenario, one of the two interest-rate shocks must be positively correlated with the credit risk losses.

that the correlation between credit and market risk can be better measured, as a practical matter, joint estimation during stress periods is, for now, untested and more challenging analytically, and would not provide a technically sound basis for estimating capital charges at this time. Thus, the Finance Board believes that the conservative approach of the proposed rule best assures that the Banks will remain adequately capitalized and will continue to operate in a safe and sound manner throughout periods of future market stress.

Another commenter stated that the Finance Board did not provide in the proposed rule sufficient detail of the parameters for internal credit models, which models, the commenter believed, will be heavily relied upon by the Banks. However, neither the proposed rule nor the final rule allow a Bank to calculate its credit risk capital requirement using an internal credit risk model. In two narrow circumstances, the rule, both as proposed and adopted, allows a Bank to use an internal model to calculate the potential future credit exposure (PFE) on a derivative contract or the credit equivalent amount on certain off-balance sheet items as an alternative to using the tables and formulas provided in the rule for estimating those values. In both cases, the Finance Board would review the models and the assumptions before allowing a Bank to employ the model. Moreover, neither the derivative contracts nor the off-balance sheet items in question represent a large amount of the Banks' balance sheets.

Based on the comments received, the Finance Board made a number of changes to the credit risk capital requirement in the final rule. These changes, which are discussed in detail below, include refinements to the methodologies used in estimating the credit risk percentage requirements for Table 1.1, Table 1.2, and Table 1.3. The Finance Board also has changed in the final rule the method used to calculate the credit risk charge for derivative contracts and expanded the situations in which the Bank may reduce its capital charge for an asset hedged with a credit derivative. As explained below, while the Finance Board believes that the new method adopted for calculating the credit risk capital charge for derivatives better captures the true risk of the Banks' exposure to these instruments, the Finance Board does not believe that the change will have much practical effect on the level of the credit risk capital requirement because derivative contracts represent a very small part of the Banks' balance sheets.[10] The Finance Board has adopted § 932.4 of the final rule with the changes discussed below.

Table 1.1. The credit risk percentage requirements for Bank advances in the proposed rule were based on the general methodology used to set credit risk percentage requirements for credit exposures of rated assets, off-balance sheet items or derivative contracts other than advances and residential mortgages (Table 1.3). As discussed in more detail in the discussion of Table 1.3 below, the general methodology was based on the highest estimated (proportional) credit losses by rating category and maturity class observable over a two-year period during the interval 1970 to 1999.

Several adjustments were made to the general methodology in setting the credit risk percentage requirements for advances. The general methodology was based on default and downgrade data on corporate bonds. For advances, only default data was used. Downgrade data really has no meaning because advances are fully collateralized and the Banks can require additional collateral at any time. Because the Banks have never incurred credit losses on their advances to a member, the Finance Board assumed, for purposes of establishing a default rate for advances, that advances would exhibit the same default patterns as the highest investment grade (triple-A) corporate bonds and that advances would have a recovery rate of 90 percent (i.e., a loss severity rate of 10 percent). A 90 percent recovery rate was considered consistent with the over-collateralization and other protections afforded advances. A credit risk horizon equal to the remaining maturity of the advance was deemed more appropriate than imposing the maximum two-year horizon used in the general methodology, because advances are unique products of the Banks that cannot readily be sold in the marketplace like most of the other investments of the Banks and, therefore, would have to remain on the books until maturity. The probability of default was then measured as the maximum probability of a triple-A corporate issuer default, but over a period extending to the maturity of the advance.

Adjustments also were made to the credit risk percentage requirements assigned to the shortest and longest remaining maturity classes. As calculated, the requirement for advances with a maturity of four years or less would be zero. However, recognizing that advances are not totally risk free, a minimum capital requirement of seven basis points was set to ensure that the Banks would hold sufficient capital, particularly in view of the GLB Act's recent amendments to the Bank Act which expanded the types of collateral available to support advances. *See* 12 U.S.C. 1430(a)(3); 65 FR 44414 (July 18, 2000). Further, as calculated for the proposed rule, the requirement for maturities greater than 10 years would have been 50 basis points. However, because the estimated capital charge for triple-A-rated residential mortgage assets (as presented in proposed Table 1.2) was less than 50 basis points, and because advances clearly have a better credit loss history than residential mortgages, advances with a remaining maturity of greater than 10 years were assigned a credit risk percentage requirement equivalent to the requirement for triple-A-rated residential mortgage assets. In the final rule, the requirement for advances with remaining maturities greater than 10 years was adjusted to reflect the revised methodology used to calculate credit risk requirement percentages for residential mortgage assets for Table 1.2. and is set at 35 basis points. The credit risk percentage requirement of 20 basis points for remaining maturities greater than 4 years up to 7 years was based on actual default rates and remains the same in the final rule. For maturities of greater than 7 years up to 10 years, the credit risk percentage requirement, if based on actual default rates, would have been 40 basis points. In the final rule, however, the credit risk percentage requirement was reduced to 30 basis points to conform with the 35 basis point requirement for maturities greater than 10 years.

In the proposed rule, the Finance Board specifically requested comment on the methodology that should be used for setting the credit risk percentage requirements for advances and whether a more satisfactory analytical framework exists that could be used to determine more appropriate credit risk percentage requirements for advances.

The Finance Board received several comments on the proposed credit risk percentage requirements for advances. One commenter was supportive of treating advances independently of underlying collateral; another stated that the less-than-four-year maturity advance percentage requirement was reasonable. However, commenters generally questioned whether the Finance Board had given adequate consideration to the nature of member borrowers, the strong collateral position

[10] As of December 31, 1999, the Banks' combined maximum credit exposure to derivative contracts was approximately $2 billion. This was a small amount compared to the Banks' assets of $633 billion or their capital of $30 billion.

of the Banks and the additional security provided by the capital stock for advances in developing the credit risk percentage requirements for advances.

Two Banks commented on a possible alternative analytical framework, which was suggested by a consultant to the Banks that could be used to derive the credit risk percentage requirements for advances. The consultant reviewed rating agency data and concluded that financial institution default rates are roughly 30 percent to 40 percent of corporate bond default rates. The consultant further reasoned that because Bank members are regulated financial institutions, and not corporate borrowers, default rates based on corporate borrowers were overstated.

Additionally, the Banks believed that using recovery rates of 90 percent understates the value of collateral pledged to support advances, which when properly accounted for on an estimated market value approach, would yield a value in excess of the underlying advances. One Bank suggested that the Finance Board consider requiring that collateral portfolios be further subjected to stress testing as an alternative input into the credit risk percentage requirement calculations for credit exposures arising from advances. The Bank also argued that the proposed rule did not take account of the fact that by statute, the capital stock investment of a member acts as additional security for advances. The Bank believed that recognition of the collateral and capital values available to the Banks should reduce the credit risk from advances to zero. The Bank further stated that from a safety and soundness perspective, the Finance Board and the Banks themselves should be more concerned with the adequacy of collateral methods and practices than in trying to determine a capital requirement from inappropriate statistics. The Bank asserted that mortgage data, which is available and frequently analyzed, should be the basis for determining credit exposures from secured advances.

The Finance Board has considered all comments and believes that the methodology, described above, used to determine credit risk percentage requirements for advances does adequately consider the unique characteristics of advances. The fact that the credit risk percentage requirements for advances set forth in Table 1.1 of the final rule are lower than those for other residential mortgage assets set forth in Table 1.2 of the final rule demonstrates that the Finance Board explicitly recognizes that advances have less credit risk than other mortgage assets. This view is based upon, among other things, the fact that advances are well collateralized and are provided additional safeguards under the Bank Act. Further, as is addressed in greater detail in the discussion of Table 1.2, the Finance Board has considered available mortgage data in developing the credit risk percentage requirements for residential mortgage assets other than advances. Because this new approach lowered the credit risk percentage requirements for these residential mortgages assets, the credit risk percentage requirements for advances with remaining maturities in the categories of more-than-seven-years-to-ten-years and over-ten-years in Table 1.1 also have been lowered so that the credit risk percentage requirements for advances remain below the requirements for other residential mortgage assets. Thus, the final rule continues to recognize that advances have less credit risk than other mortgage assets.

Further, the Finance Board does not believe that it will be realistic to eliminate credit risk charges for advances, as some commenters have urged. Given that advances are a large part of the Banks' total assets, the credit risk capital requirement—and the risk-based capital requirements more generally—would not be credible if risk-based capital were not held against the credit risk of advances. Nor have the commenters provided enough information on other suggested approaches for estimating the credit risk percentage requirements for the Finance Board to implement these methodologies at this time. The Finance Board believes that the credit risk percentage requirements adopted in Table 1.1 recognize the unique characteristics of advances while, given current available information, still provide a conservative estimation of the risks presented by these assets. The Finance Board will consider amending its current methodology as better information and theoretical approaches become available.

Table 1.2. The credit risk percentage requirements in the proposed rule for residential mortgage assets were based on a quantitative analysis of the default and downgrade experience of rated corporate bonds. However, the Finance Board received comments expressing the view that the credit quality of rated residential mortgage backed instruments (RMBS) is generally better than corporate bonds with similar ratings and tenor. The Finance Board, therefore, reviewed available information on rated RMBS downgrades and defaults. This information indicated that defaults have been extremely infrequent and that there have been proportionately fewer downgrades on RMBS than on otherwise similar corporate bonds. The magnitude of the difference in credit performance appeared relevant, even given the short history of the RMBS market.

The Finance Board also found that the factors that affect rated RMBS are not typical of those that affect the credit quality of corporate bonds. Factors that appear to generally benefit the credit quality of rated RMBS include: The relative stability of home prices; the diversification in the underlying collateral; and the relatively predictable performance of the collateral pools. The Finance Board found these arguments persuasive and, as explained more fully below, has applied in the final rule a different basis on which to determine the capital charges for residential mortgage assets.

Commenters also expressed the view that the capital charges in the proposed rule for BBB and lower rated residential mortgage assets exceeded the risk of these assets, some noting that bank and thrift depositories are only required to hold four percent risk based capital against unenhanced residential mortgages. The Finance Board generally took this view into account in developing a new basis for determining the capital charges in the final rule, but notes that Banks are only allowed to invest in investment grade assets and therefore the capital charges in the proposed rule for residential mortgage assets rated below investment grade would have applied only if the assets were downgraded. The Finance Board also adopted in the final rule a lower but still stringent credit risk percentage requirement for residential mortgage assets rated below B. This final credit risk percentage requirement still accounts for the fact that these assets may only reside on the books of the Banks as a result of being downgraded from investment grade and are presumed to have some material credit quality issue.

The Finance Board also recognizes that some of the concern with the credit risk percentage requirements for lower-rated mortgage assets may have been prompted by a lack of clarity in the proposed rule. The proposed rule did not make clear that the credit risk percentage requirements would be assigned for AMA based on the credit rating after application of the credit enhancement required under the Finance Board rules or application of any additional enhancements obtained by the Bank. Section 932.4(e)(2)(ii)(E) has been added to the final rule to

clarify this point. The final rule assumes the adequacy of the credit enhancement provided by members under the AMA requirements, and no credit risk capital charge need be applied to any potential exposures arising from these member-provided credit enhancements. The Finance Board may, however, require a Bank to apply a credit risk capital charge to any credit enhancement obtained by a Bank for AMA beyond that required under § 955.3(b) if the Finance Board believes that there are deficiencies associated with those additional enhancements.

While the final rule no longer relies upon quantitative data on the credit performance of rated corporate bonds as an indicator of the credit risk on mortgage assets, the Finance Board was unable to identify any adequate similar quantitative data to substitute for rated RMBS to conduct a similar analysis. The data is not readily available and, because of the brief history of the RMBS market, such data as could be found would not provide a robust information source regarding periods of economic stress. The Finance Board, therefore, has adopted in a final rule a significantly different approach than that employed in the proposed rule—one that is necessarily less mechanical in applying historical credit losses and one that considers the practices of other regulators and market participants. More specifically, the credit risk percentage requirements set forth in Table 1.2 of the final rule are based on an approach that considers: (1) The risk-based capital charges employed by regulated banks and thrifts for residential mortgage loan portfolios and for agency mortgage-backed securities (MBS); (2) the minimum MBS capital charges for Fannie Mae and Freddie Mac; and (3) the capital charges implicitly employed by the nationally recognized statistical rating organizations (NRSRO) when rating RMBS and mortgage insurance companies. The Finance Board also drew from the NRSRO's approach for determining the charges for the different rating categories in developing Table 1.2 of the final rule.

The capital required for performing residential mortgage loans varies widely. Commercial banks and thrifts are required to hold 4 percent risk-based capital against these loans. This requirement was enacted after the severe residential mortgage credit problems of the 1980s. Also, it is applied uniformly to well-diversified, conforming loan portfolios and to the often riskier, non-diversified and non-conforming portfolios. As such, the 4 percent requirement may be viewed as a conservative benchmark relative to the residential mortgage assets covered by Table 1.2 of the final rule.

In contrast with the residential loan portfolio risk-based requirement, commercial banks and thrifts are only required to hold 1.6 percent risk-based capital for GSE-issued MBS. The fact that many banks and thrift originators do not take advantage of this ability to transfer virtually all of their credit exposure on conforming loans to Fannie Mae and Freddie Mac may indicate that the banks and thrifts view the 2.4 percentage point credit risk differential as larger than the actual difference in the credit exposure between conforming loan pools and GSE MBS.

The Finance Board also reviewed information regarding the credit enhancement required to raise unenhanced loan pools to the highest credit rating as an indication of the capital charge for unenhanced loan pools. For example, whole loan RMBS typically have AAA credit enhancement requirements ranging from four percent to seven percent. However, this may be a conservative indicator relative to the assets covered by this rule because many whole loan RMBS have non-conforming collateral due to loan size or credit issues, or the loans are adjustable rate mortgages (ARMs) or the collateral may have some element of geographic concentration. These factors are associated with higher loss experience. In contrast to whole loan RMBS, the Finance Board has observed that the AAA credit enhancement requirement on many Bank AMA pools falls below 4 percent.

The Finance Board also noted the 0.45 percent statutorily-based minimum capital requirement for Fannie Mae and Freddie Mac MBS guarantees on conforming loans. This requirement on loans with no credit support is less than the Finance Board's credit risk percentage requirement for all but the highest rated mortgage asset. However, comparison between the OFHEO and the Finance Board requirements is difficult because of the different risk-based approaches of the two regulators. Moreover, the OFHEO requirement may not be indicative of a true risk-based charge. The 0.45 percent requirement is part of the statutory minimum total capital requirement for Fannie Mae and Freddie Mac. 12 U.S.C. 4612(a). In this respect, it is more comparable to the minimum total capital leverage requirements of the GLB Act than a risk-based charge. Based on the foregoing, the Finance Board has decided to adopt in the final rule a benchmark exposure, and therefore a credit risk percentage requirement, of 2.4 percent for performing, well diversified, prime-quality, conforming residential mortgage loan pools.

The Finance Board also has decided to use the general rating scheme and certain aspects of the RMBS rating process to determine the credit risk percentage requirements for residential mortgage assets. The Finance Board has found that the RMBS rating process employs useful standards for understanding the relative risk of residential mortgage pools. The rating process generally relies upon parameters for foreclosures and losses on residential mortgages under various economic stress scenarios. The rating process is typically systematic and appears to be based on a comprehensive review of information bearing on residential mortgage credit losses. Moreover, the Finance Board has found that the rating process for RMBS has relatively wide acceptance in the debt market, among secondary market participants and with mortgage insurers. The Finance Board was informed that, during stable, moderately favorable economic conditions, the unenhanced whole loan pools underlying RMBS could be considered to have credit quality in a range between BB and CCC. The Finance Board believes that, in general, prime-quality, conforming loan pools typically should have more favorable credit quality than RMBS whole-loan pools. Given this, the Finance Board has decided that, for purposes of the final rule, well-diversified conforming loan pools should be considered to have an exposure benchmark similar to a BB rating.

Based on the assumptions that well-diversified, prime-quality, conforming residential mortgage loan pools have a credit risk percentage requirement of 2.4 percent, and that such pools may be assumed to have credit quality similar to a BB-rated mortgage asset, the Finance Board has used the relative credit support required by the RMBS rating process to assign the credit charges for the other rating categories. Using this approach, the credit risk percentage requirements are derived based on the relative amount of credit support that is generally provided for the different rating grades as a percentage of the BB benchmark.

Table 1.2 of the final rule presents the credit risk percentage requirements for FHLBanks' residential mortgage-related exposures. The credit risk percentage requirements presented in the final rule are based on the assumption that residential mortgage assets will typically consist of conforming, prime-quality loans with loan-to-value (LTV)

ratios below 80 percent or loans with higher LTV ratios that have appropriate levels of mortgage insurance. The Finance Board further assumes that the performance of any credit enhancement is assured in all relevant economic stress scenarios, and that the Banks' portfolios of residential mortgage assets will have appropriate diversification, and will not have geographic or other concentration factors that increase credit risk. Finally, the credit risk percentage requirements for mortgage assets adopted in the final rule take into account that the Banks are required to invest in mortgage-backed assets that have credit quality no less than that of the fourth highest credit rating class.

A uniform application of the standard adopted in the final rule, however, would fail to address the fact that the credit risk of pooled residential mortgages may be concentrated in subordinated classes and support tranches. Support classes may also have longer weighted average lives than the senior classes they support. To address this concern, the Finance Board adopted a more stringent capital standard for such asset classes. It was further observed that AAA and AA classes were much less likely to feel the effect of subordination. For these reasons, it was determined that, for subordinated residential mortgage assets below AA, the credit risk percentage requirements should be the same as those for Rated Assets or Rated Items Other Than Advances or Residential Mortgage Assets in the 3 to 7 year maturity class of Table 1.3 of the final rule. Table 1.2 of the final rule has been modified to add specific credit risk percentage requirements for these subordinated classes and support tranches of residential mortgage assets.

The above-described approach best accommodates the information now available to the Finance Board. However, the Finance Board will continue to gather and analyze data on the performance of residential mortgage loan pools and RMBS, and intends to amend these capital charges if more complete and representative information and analysis becomes available.

Table 1.3. In the proposed rule, the credit risk percentage requirements in Table 1.3 for credit exposures of rated assets, off-balance sheet items or derivative contracts other than advances and residential mortgages were calculated from Moody's data on corporate bond performance. Specifically, the requirements were based on the highest estimated (proportional) credit losses by rating category and maturity class observable over a two-year period during the interval 1970 to 1999. The Finance Board received only one comment on the methodology described in the proposed rule used to arrive at the requirements listed in Table 1.3. That commenter identified two concerns. First, only 30 years of performance data were used, whereas 80 years of performance data are available. Second, and more importantly, single-year maximum default rates rather than long-run average default rates were used. The commenter added that the single-year maximum approach would identify maximum default rates based on outlier results, hence the resulting rates need not be representative of the true relative differences in proportionate market value losses by rating class—the goal of a ratings-based approach.

The Finance Board continues to believe that the most recent 30 years of Moody's data includes a sufficient number of observations that are representative of the modern era. The Finance Board does see some merit in the single-year (actually a two-year period is presented in the proposed rule but the point is the same) versus long-run average concern. Not all of the changes recommended in this comment have been adopted in the final rule because basing requirements only on long-run averages would result in too little capital being available to support credit risk during periods of economic stress. However, the methodology for the final rule has been modified to eliminate the single-year concern, thus preserving the true differences in proportionate market value losses by rating class, while retaining a capital requirement sufficient to support credit risk during periods of economic stress. Under the modified approach, the long-run average default and downgrade rate of each rating category/maturity class is multiplied by a factor that represents an average (over rating category and maturity class) of stress-period increases in those rates. This method of determining the credit risk percentage requirements in the final rule is described in detail below, and resulted in modest changes in both directions to the proposed credit risk percentage requirements.

Two factors were considered in selecting credit risk categories for assets on which to impose distinct credit risk capital requirements in percentage terms: an objective measure of the credit risk of the asset, and the term structure, or maturity, of the asset. The credit ratings assigned by NRSROs were used as an objective standard upon which to categorize assets by credit risk. Such ratings are generally accepted in the market place as well as by other regulators. Of course, not all assets are rated by NRSROs, but most Bank investments either are rated by an NRSRO or can be evaluated internally and assigned a credit rating using models or other methods consistent with the rating methodologies used by NRSROs. In keeping with the standards established by NRSROs,[11] the following rating categories were used in the base analysis:

- AAA Highest investment grade.
- AA Second highest investment grade.
- A Third highest investment grade.
- BBB Fourth highest investment grade.
- BB Highest below investment grade.
- B Second highest below investment grade.
- CCC–C Substantial risk of default.

Credit ratings do not, however, reflect how the credit risk of a rated asset might vary according to its remaining maturity. For example, actual data indicate that the credit risk of a AA-rated asset with a one-year maturity is clearly less than that of an AA-rated asset with a 10-year maturity. In fact, other financial regulators have begun to recognize the term structure of credit risk in their risk-based capital requirements.[12] Consequently, each of the 7 credit rating grades was expanded to reflect 14 different remaining maturity classes resulting in 98 credit risk categories overall. The maturity classes were selected to show how significantly credit risk percentage requirements might change given modest changes in remaining maturity. They also capture the entire term structure of credit spreads, but primarily include maturities for which data is more readily available because there is sufficient trading activity. The remaining maturities used were six and nine months, and 1, 1.5, 2, 3, 4, 5, 7, 10, 15, 20, 25, and 30 years.

For each of the 98 credit risk categories, credit losses from defaults and downgrades were determined as a proportion of face value for each two-year horizon between 1970 and 1999. Furthermore, to simplify the analysis, beginning dates for each horizon were

[11] Each category used by the NRSROs has modifiers, either plus and minus or 1, 2 or 3. However, the derivation of credit risk percentage requirements described here does not take such modifiers into consideration because consideration of modifiers would triple the number of credit risk categories and significantly reduce the historical time period for which data on defaults and credit downgrades is available. To achieve more robust estimates of actual credit losses by category, the modifiers are ignored.

[12] See 65 FR at 43421.

limited to the first day of each month in the sample period. Thus, the first historical period covered January 1, 1970 through December 31, 1971, the second historical period covered February 1, 1970 through January 31, 1972, etc., and the last extended from January 1, 1998 through December 31, 1999, for a total of 336 periods examined for each credit risk category.

A two-year historical period horizon is a more conservative assumption than the one-year horizon, which is perhaps more commonly assumed by commercial banks. As stated by the Federal Reserve System Task Force on Internal Credit Risk Models, ''[I]t is often suggested that one year represents a reasonable interval over which a bank—in the normal course of business—could mitigate its credit exposures.'' [13] Also, according to a survey conducted by the BCBS, most of the responding commercial banks used a one-year horizon for calculating economic capital for credit risk in the banking book.[14] Nonetheless, the survey did provide some support for a longer historical period horizon. For example, some responding banks used a five-year horizon or modeled losses over the maturity of the exposure. In addition, based on experience in the U.S. and elsewhere, more than one year is often needed to resolve asset-quality problems at troubled banks. Therefore, the Finance Board believes that the two-year horizon would better assure that adequate capital is maintained against the credit risks faced by the Banks than would a shorter time horizon.

All historical data on defaults and downgrades were obtained from Moody's Default Risk Service. The Moody's database contains information on defaults, rating downgrades and market prices for bonds in default, *i.e.*, recovery rates, that span multiple credit cycles from 1970 to the present and covers over 8,000 corporate issuers, 66,000 corporate bonds, 196,000 ratings actions, and 1,200 defaulted bonds. The data set was restricted to U.S.-based entities, because the Banks are not permitted to invest in instruments issued by non-U.S. entities, except U.S. branches and agency offices of foreign banks.

Credit losses associated with defaults were assumed to be 100 percent of the issues' face value. According to a study of defaults by Moody's, the average recovery rate (based on market prices) for bonds in default has been observed as low as 21 percent and 30 percent in 1932 and 1990, respectively, corresponding to peaks in corporate default activity.[15] Furthermore, the average recovery rate for senior unsecured public debt was $51.31 per $100 defaulted face value with a standard deviation of 26.30 percent during the 1977–98 period.

Credit losses associated with downgrades were determined based on approximations of the proportionate difference between the initial market value (corresponding to the initial credit rating) and the market value subsequent to the downgrade. These approximations were derived from the maximum loss in market value associated with downgrades, by credit rating category, observed in data covering 1992–2000. Pre-1992 data were not available. For example, the maximum shift in credit spread for a 10-year bond from AAA to AA was observed to be 29 basis points over the period 1992–2000. Similarly, the shifts from AA to A, and A to BBB, were 57 and 70 basis points, respectively. Shifts of more than one credit rating within a period, such as from AAA to A, were derived as the sum of the corresponding single rating shifts, or in this case the sum of the shift in spreads from AAA to AA and AA to A, or 86 basis points. For downgrades to CCC–C rating categories, a loss in market value of 100 percent was assumed based on the historical evidence that, over a specific three-month horizon, all of the U.S.-based issuers rated CCC–C in the Moody's database actually did default.[16]

For each of the 336 periods examined for each of the 98 credit risk categories, losses generated by downgrades and defaults were added to gains from ratings increases (determined in a like manner to losses from downgrades) to determine a change in value. Each change in value was then divided by the corresponding face value to arrive at a loss rate. The resulting loss rates were aggregated to reduce the number of maturity classes from 14 to 5. Specifically, for each credit rating, maturity classes of less than or equal to 1 year, more than 1 year to 3 years, more than 3 years to 7 years, more than 7 years to 10 years, and over 10 years were created. The loss rates were aggregated in the maturity classes by simple averaging with overlapping endpoints, such that the 3 year loss rates were included in the averaging to arrive at the 1 to 3 year and 3 to7 year maturity class loss rates. Loss rate means, distributions, and maximum values were then calculated for each of the 30 remaining credit risk categories (five maturity classes for each of the top 6 credit ratings). The loss rate distributions were not normally distributed. In addition, no isolated observations that could be considered outliers were observed. Consequently, a common stress level of loss rates was determined by averaging (for the 30 credit risk categories) the distance from the mean of the maximum loss rate divided by the standard deviation. The common stress level estimate was 3.22. The credit risk percentage requirements for Table 1.3 were then determined for each of the 30 credit risk categories as equal to the corresponding mean loss rate plus 3.22 times the corresponding standard deviation. These percentage requirements, as they appear in Table 1.3 in the final rule, have been rounded to the nearest 5 hundredths, or, if below investment grade, to the nearest whole percent.

Table 1.4. The proposed rule set forth credit risk percentage requirements for certain unrated assets in Table 1.4. These assets, which included cash, premises, plant and equipment, and certain debt and equity investments, had no relevant loss experience from which to calculate a credit risk percentage requirement. In the proposed rule, cash was assigned a credit risk percentage requirement of zero percent, as it was deemed not to present any credit risk to the Bank. All of a Bank's tangible assets, premises, plant and equipment, as well as any unrated debt or equity investments made by the Banks pursuant to § 940.3(e) and (f),[17] were assigned an eight percent credit risk percentage requirement. *See* 65 FR at 43423–24. As described below, the Finance Board received a few comments on proposed Table 1.4 but has not revised the table in the final rule.

[13] *See* ''Credit Risk Models at Major U.S. Banking Institutions: Current State of the Art and Implications for Assessment of Capital Adequacy,'' Federal Reserve System Task Force on Internal Credit Risk Models, May 1998, p. 10.

[14] *See* ''Credit Risk Modeling: Current Practices and Applications'', BCBS, April 1999.

[15] *See* ''Historical Default Rates of Corporate Bond Issuers, 1920–1998,'' Moody's Investors Service, January 1999.

[16] Based on Moody's Default Risk Service database, all issuers rated CCC–C defaulted between March 1, 1984 and May 31, 1984.

[17] Table 1.4 of the proposed rule made a reference to unrated, targeted investments made under § 940.3(a)(5) of the Finance Board's regulations. This reference was based on the types of targeted investments proposed in § 940.3. See 65 FR 25676 (May 3, 2000.) The Finance Board, when it adopted § 940.3 in final rule form, listed the relevant targeted investments in § 940.3(e), and altered the provision somewhat. See 65 FR 43969, 43972–74, 43981 (July 17, 2000). Table 1.4 of this final rule has been corrected to conform its reference to the relevant targeted investments to the final version of § 940.3 adopted by the Finance Board and to include unrated investments in Small Business Investment Companies (SBICs) as set forth in § 940.3(f) which were inadvertently omitted from the proposed rule.

One commenter expressed concern that the credit risk percentage requirement for unrated assets made by the Banks would discourage certain new programs that have been initiated by the Banks, such as programs to purchase portions of loans for community economic projects or to fund community development. The commenter believed that the Banks would have been required to hold capital dollar-for-dollar for such investments. However, under both the proposed and the final rule, the Banks are required to hold only 8 percent capital for targeted investments made pursuant to § 940.3(e) of the Finance Board's regulations. 12 CFR 940.3(e). These investments appear to include the investments described by the commenter.[18] The 8 percent credit risk percentage requirement for targeted investments made under § 940.3(e) is consistent with the capital requirements applicable to national banks with regard to public welfare investments. The targeted investments included in Table 1.4 would be certain debt or equity investments that advance specific public welfare goals. *See* 65 FR 43969, 43972–74 (July 17, 2000). In general, under the final version of the capital rule, the Banks are required to hold 100 percent capital only when rated investments or residential mortgage assets are downgraded to below single-B after the Bank has purchased the investment.

Another commenter expressed concern that the proposed capital requirement of 8 percent for investments made under § 940.3(e) of the Finance Board's regulations could greatly discourage the Banks from making these innovative, mission-oriented investments. The commenter believes that the 8 percent requirement for such investments relative to the capital requirement of only 0.35 percent for long-term advances may cause the Banks to consider making these investments prohibitive. The commenter suggested two approaches for remedying this concern. First, the commenter suggested that the Finance Board permit each Bank to hold a substantially lower level of capital for a limited volume or range of targeted investments. The commenter believed that a modest volume of from $200 million to $300 million would not pose any risk to the safety and soundness of the System, but would greatly encourage the Banks to make and become comfortable with targeted investments.

The commenter's second approach to overcome concerns about whether the Banks would make targeted investments given an 8 percent credit risk percentage requirement was that the Finance Board permit a much lower capital requirement for senior debt investments in community development funds that raise at least a dollar of equity for every two dollars of such investments. According to the commenter, the community development entity could use the proceeds of the Bank investments to finance activities eligible under § 940.3(e)(3), and the structure would be similar to that for SBICs. The commenter posited that the community development fund would have to lose its entire equity stake before the Bank's senior debt investment would be jeopardized, so that a much smaller risk-based capital requirement would be justified.

The Finance Board believes that the fact that targeted investments are included as Core Mission Activities will serve as adequate encouragement for the Banks to make such investments, regardless of the credit risk capital charges. *See* 12 CFR part 940. Further, the Finance Board believes that it is imperative to the safety and soundness of the Bank System that the Banks hold sufficient capital to cover the risks of permissible investments. As discussed above, the 8 percent credit risk percentage requirement for targeted investments made under § 940.3(e) is consistent with the capital requirements applicable to national banks with regard to public welfare investments. The targeted investments included in Table 1.4 would be certain debt or equity investments that advance specific public welfare goals.

Derivative contracts. As already discussed, the final rule has been changed to reflect the fact that implementation of SFAS 133 means that derivative contracts cannot solely be described as off-balance sheet items. More importantly, however, and for reasons unrelated to SFAS 133, the method of calculating the credit risk capital charge and assigning the credit risk percentage requirements for derivative contracts has been changed, as discussed below.

Under the proposed rule, the credit risk capital charge for a derivative contract would have been calculated by adding the current credit exposure to the PFE and then multiplying that sum by the credit risk percentage requirement from Table 1.3 corresponding to the remaining maturity of the derivative contract and the credit rating of the counterparty. This proposed approach was adopted directly from the Finance Board's FMMA proposed rulemaking. 64 FR 52163 (September 27, 1999). The FMMA, however, did not consider the term structure of credit risk when calculating credit risk capital charges. Because § 932.4 of the final rule does consider the term structure of credit risk, the Finance Board has adopted an approach to calculating the credit risk capital charge for derivative contracts that recognizes the term structure of credit risk.

Under § 932.4(d) of the final rule, the credit risk capital charge for a derivative contract will be the sum of two components. The first component will equal the product of the current credit exposure of the derivative contract multiplied by the applicable credit risk percentage requirement for the derivative instrument. However, in assigning the correct credit risk percentage requirement, the current credit exposure will be assumed to have a maturity of less than one year, regardless of the actual remaining maturity of the derivative contract. This approach is consistent with the fact that the current credit exposure of a derivative contract represents the current market value of the derivative contract, and that the value will generally change over the short term. The Finance Board believes that it is reasonable, therefore, to treat the current credit exposure on a derivative contract as a short-term exposure.

The second component of the credit risk capital charge for a derivative contract will equal the product of the PFE for a derivative contract multiplied by the assigned credit risk percentage requirement. For purposes of calculating the capital charge on the PFE, the credit risk percentage requirement under the final rule will be assigned based on the remaining maturity of the derivative contract and the credit rating of the counterparty. This approach is consistent with the fact that the PFE represents the highest future market value that the derivative contract may attain during its remaining life. Although the highest future market value for a derivative contract rarely will occur at the end of the derivative contract's life, the Finance Board is adopting a conservative approach to estimating the credit risk capital charge and is assuming that it will occur at the end of the life of the derivative contract. Thus, the credit risk percentage requirement applied to the PFE of a derivative contract will correspond to

[18] Moreover, if the commenter intended to describe investments that were not included in § 940.3(e) and (f), the Finance Board does not believe, based on its understanding of the comment, that the Banks would have authority to make such investments because the Banks are not generally allowed to invest in assets that are rated below investment grade.

the remaining maturity of the derivative contract.

The proposed rule also did not differentiate between a derivative contract entered into with a counterparty that was a member of the Bank, and one entered into with a counterparty that was not a member of the Bank. In the final rule, however, the Finance Board has determined to treat the credit exposure arising from a derivative contract with a member institution like an advance, because the Banks generally apply the same collateral requirements to these exposures, and the legal rights with regard to the collateral are comparable to those with regard to the collateral for advances. *See e.g.*, 12 U.S.C. 1430(e) (1994). Thus, the credit risk from the derivative contract should be similar to that from an advance. Under § 932.4(d)(2) of the final rule, the credit risk capital charge for derivative contracts entered into between a Bank and one of its member institutions will be calculated as the sum of the credit risk capital charges on the current credit exposure and the PFE, as described above, except that the applicable credit risk percentage requirements will be found in Table 1.1, which sets forth the credit risk percentage requirements for advances. For example, the credit risk percentage requirements applicable to the current credit exposure for a derivative contract entered into with a member institution would be that in Table 1.1 corresponding to an advance with a remaining maturity less than or equal to four years, and the credit risk percentage requirement applicable to the PFE for the same derivative contract would be that in Table 1.1 corresponding to an advance with the same remaining maturity as the derivative contract.[19]

In addition, § 932.4(d) of the final rule provides that collateral held against the credit exposure arising from a derivative contract can only be applied to reduce the credit risk capital charge calculated for the current credit exposure. The collateral must be held and the reduced credit risk capital charge calculated in accordance with the provisions of § 932.4(e)(2)(ii)(B) of the final rule, which are discussed in more detail below. Collateral cannot be used to reduce the credit risk capital charge calculated for a derivative contract's PFE. This approach is consistent with the fact that the Banks and derivative dealers more generally hold collateral against the current credit exposure and not against the PFE.

The final rule also contains a technical change to clarify how the calculation of the net PFE for derivative contracts subject to a qualifying bilateral netting agreement should be applied.[20] Under the proposed rule, one net PFE value would have been calculated for all the derivative contracts subject to the same qualifying bilateral netting agreement, even though those contracts all may have had different remaining maturities. The proposed rule failed to direct how this single, net sum could be allocated among the different contracts when assigning the credit risk percentage requirement from Table 1.3 (which would have been assigned based in part on remaining maturity of the derivative contracts) and calculating the credit risk capital charges. The Finance Board has addressed this omission in the final rule by clarifying that the PFE for derivative contracts subject to a qualifying bilateral netting agreement should be calculated on a contract-by-contract basis. However, the calculation of the PFE for derivative contracts subject to the bilateral netting agreement, both as proposed and in the final rule, is based on the same theoretical approach recommended by the BCBS and federal banking regulators. *See e.g.*, 12 CFR part 3, Appendix A (2000) (regulation of the Office of the Comptroller of the Currency, Department of the Treasury). As such, the formula for calculating the PFE in the final rule still allows for the beneficial effects of netting to reduce the PFE.

Certain additional technical changes were made to the provisions in the final rule concerning the applications of the credit conversion factors given in Table 3 of part 932 that are used to calculate the PFE for a single derivative contract. Under the final rule, the PFE for a single derivative contract (not subject to a qualifying bilateral netting contract) is found by multiplying the effective notional amount of the contract, rather than just the notional amount as in the proposed rule, by the correct credit conversion factor from Table 3. The effective notional amount takes account of any added leverage that may be built into a derivative contract by multipliers or other means and therefore provides a more accurate basis for calculating a Bank's credit exposure under a derivative contract.[21]

Further, a change in the final rule has been made with regard to the credit conversion factor from Table 3 that would be applied in order to calculate the PFE of a credit derivative. Under the proposed rule, the credit conversion factor used for interest rate contracts would have also been applied to calculate the PFE on credit derivative contracts. The Federal Reserve System (Federal Reserve), however, applies factors applicable to equity or other commodity contracts when calculating the PFE for credit derivatives. *See* SR 97–18 (Gen.), Division of Banking Supervision and Regulations, Board of Governors of the Federal Reserve System (June 13, 1997). In effect, the Federal Reserve is treating the credit derivative contracts as riskier instruments than did the Finance Board in the proposed rule. Given the conservative approach taken by the Finance Board in developing these capital requirements, the final rule calculates the PFE for credit derivative contracts using the same approach as that used by the Federal Reserve.

Collateral. Section 932.4(d)(2)(ii)(B) of the proposed rule provided that, when an asset or item was not directly rated by a NRSRO, the credit rating of an obligor counterparty, third party obligor or of the collateral backing the asset or item would have to be used to assign the applicable credit risk percentage requirement.[22] For derivative contracts, which are generally not directly rated by an NRSRO, the proposed provision would have allowed a Bank to use the credit rating of the counterparty or of the collateral, whichever rating was more favorable. However, substituting the credit rating of the counterparty, third party obligor, or collateral would have been allowed only to the extent that the collateral or guarantee backed the underlying credit exposure. Further, collateral would had to have been held in accordance with the specific requirements set forth in proposed § 932.4(d)(2)(ii) to receive the treatment afforded by that provision. While the Finance Board has made some clarifying

[19] For a derivative contract with a nonmember, the applicable credit risk percentage requirement would be found in Table 1.3. For the current credit exposure, the applicable credit risk percentage requirement under the final rule will be assigned based on the credit rating of the counterparty and the assumption that the applicable remaining maturity is less than or equal to one year (unless, as discussed elsewhere in this section, the exposure is collateralized). For the PFE, the applicable credit risk percentage requirement will be based on the remaining maturity of the derivative contract and the credit rating of the counterparty.

[20] A qualifying bilateral netting agreement must meet the requirements set forth at § 932.4(h)(3) of the final rule.

[21] For example, if a derivative contract is referenced to a multiple of an interest rate index, the contract would contain greater leverage (and therefore be potentially riskier) than a derivative contract without the multiplier. In such a case, the effective notional value would be greater than the notional value to account for the higher credit exposure under the more highly leveraged contract.

[22] Because § 932.4 of the final rule has been reorganized, the collateral provision is found at § 932.4(e)(2)(ii)(B) of the final rule.

changes to the collateral provision in the final rule, it has adopted this provision substantially as proposed.

The Finance Board received several comments on the proposed collateral provision. A number of the commenters requested clarification of how collateral should be applied to reduce the credit risk capital charge for an instrument. One commenter asked specifically if the provision would allow for the reduction of the credit risk capital charge for advances if it could be demonstrated that the mortgages backing the advances met an AAA or AA rating standard. The Finance Board did not intend that the collateral provision would be applied to advances. The credit risk percentage requirements for advances provided in Table 1.1 of both the proposed and final rule were developed based on the assumption that advances are well-collateralized. No additional reduction in the credit risk capital requirement for advances was contemplated. In effect, the collateral provision is intended to apply only to assets, items or derivative contracts covered by Table 1.3 (*i.e.*, rated assets or items other than advances or residential mortgage assets). The final rule has been changed to make this clear.

Further, as already discussed, the final rule treats credit exposures arising from derivative contracts entered into between a Bank and its member as an advance for the purposes of assigning the credit risk percentage requirement. This treatment would not make it advantageous for a Bank to apply the collateral provision when calculating the credit risk capital charge for derivative contracts with a member, unless the collateral was cash or U.S. government securities. Where a member provides cash or government securities to collateralize a derivative exposure, in accordance with the requirements of the collateral provision, the Finance Board will allow a Bank to apply the credit risk percentage requirement for cash or government securities to that portion of the current credit exposure that is backed by the collateral.

Some commenters believed that collateral held against derivative contracts should either reduce the current credit exposure of the derivative contract dollar-for-dollar, or reduce the credit risk capital charge for a derivative contract dollar-for-dollar. The Finance Board disagrees. Obtaining collateral to back an asset, item or derivative contract does not eliminate credit risk for the Bank, as would be implied if the Finance Board allowed a dollar reduction in the credit exposure or the credit risk capital charge for each dollar of collateral posted. Instead, the Bank is substituting the credit risk associated with the collateral for that associated with the counterparty to the derivative contract.[23] In practice, however, under both the proposed and final rule, if the collateral backing the credit exposure arising from a derivative contract is cash or U.S. government securities, both of which carry a credit risk percentage requirement of zero, the credit risk capital charge for that portion of the credit exposure backed by the collateral would be zero.

The Finance Board also has made revisions in the final rule to the conditions that must be met before an asset, item or derivative contract will be deemed to be backed by collateral. First, § 932.4(e)(2)(ii)(B)(*1*) of the final rule was changed to make clear that collateral could be held by an affiliate of a member if permitted under the Bank's collateral agreement. This change is in line with practices concerning collateral otherwise allowed by the Finance Board and was made in response to a request by a commenter. *See* 12 CFR 950.7 (*as amended by* 65 FR 44414, 44429–30 (July 18, 2000)). The Finance Board also has changed the final rule to make clear that to be acceptable under the final rule, the required discount, or haircut, applied to the value of the collateral must be sufficient to protect against price declines during the holding period and to cover the likely costs of liquidation of the collateral. A Bank must apply a haircut to the value of the collateral before calculating the portion of the credit exposure that is deemed to be backed by the collateral.

To better illustrate how the collateral provision in the final rule will be applied, the Finance Board is providing the following examples.

Example 1: Assume that a Bank entered a derivative contract with a counterparty rated at the highest investment grade by all NRSROs. The remaining maturity on the derivative contract is 5 years. Assume further that at the time the credit risk capital charge was being calculated, the derivative contract had a current credit exposure equal to $10 million and the Bank held U.S. government securities valued at $4 million after applying an acceptable haircut to those securities, to collateralize that derivative exposure. In this case, the collateral would be deemed to back $4 million of the current credit exposure. To calculate the credit risk capital charge on the current credit exposure, the $4 million of the credit equivalent amount backed by collateral would be multiplied by the credit risk percentage requirements assigned to U.S. government securities, which is zero. The remaining $6 million would be multiplied by the credit risk percentage requirement as shown in Table 1.3 for the highest investment grade credit rating and a remaining maturity equal to one year or less. To calculate the credit risk capital charge on the PFE, the PFE would be calculated under § 932.4(g) or (h) of the final rule, as applicable, and that amount would be multiplied by the credit risk percentage requirement from Table 1.3 corresponding to the highest investment grade and a remaining maturity equal to 5 years (*i.e.*, the remaining maturity category in Table 1.3 of greater than 3 years up to and including 7 years).

Example 2: Assume the same facts as in Example 1 but instead the Bank holds U.S. government securities valued at $12 million after applying the appropriate haircut. The collateral would be sufficient to cover the total current credit exposure so that the current credit exposure would be multiplied by the credit risk percentage requirement for government securities, which is zero. The resulting capital risk credit charge on the current credit exposure would be zero. The fact that the exposure is overcollateralized does not affect the calculation of the credit risk capital charge for the PFE, which must be calculated as required in Example 1.

Example 3: Assume the same facts as under Example 1, but assume that the collateral is not held in accordance with § 932.4(e)(2)(ii)(B)(1)–(5). In this case, the current credit exposure would be deemed not to be collateralized and the credit risk capital charge for the current credit exposure would be calculated based on the credit risk percentage requirement in Table 1.3 corresponding to the credit rating of the counterparty (*i.e.*, the highest investment grade) and a remaining maturity less than or equal to one year. The credit risk capital charge for the PFE would be calculated as in Example 1.

Short term credit rating. The proposed rule did not provide specific credit risk percentage requirements for assets, such as commercial paper, that have stated maturities of less than one year and, therefore, may have a short-term credit rating from an NRSRO. Generally, NRSROs use three short-term credit ratings that are considered investment grade, including A–1, A–2 or A–3 (used by S&P), or P–1, P–2 or P–3 (used by Moody's). Research done by Moody's demonstrates that the three investment grade short-term credit ratings correspond to the four investment grade long-term credit ratings. *See* ''Commercial Paper Defaults and Rating Transactions,'' 1972–1998, Moody's Investors Service (May 1998); ''Moody's Credit Opinions: Financial Institutions,'' Moody's Investors Service (December 1999). In rating short-term commercial paper, Moody's assigns the highest short-term credit rating (P–1) to issuers that have long-term senior unsecured ratings ranging from the highest investment grade (Aaa) to the third highest investment grade (A), and assigns the second highest short-term

[23] This argument would apply to any asset, item or derivative contract backed by a guarantee or collateral.

rating (P–2) to long-term credit ratings ranging from the third highest investment grade to the fourth highest investment grade. *Id.* The lowest investment grade short-term rating (P–3) is reserved solely for the fourth highest long-term credit rating. *Id.* A comparison of U.S. financial institutions' short-term ratings by Moody's shows that the highest short-term credit rating (P–1) is more commonly associated with the third highest long-term credit rating (A) than the highest (Aaa) or second highest (Aa) long-term credit-ratings. *Id.* Based on this research and the fact that credit risk percentage requirements for long-term credit risk ratings have been developed, the Finance Board has added § 932.4(e)(2)(ii)(C) to the final rule to address assets with short-term credit ratings. Under this new provision, the applicable credit risk percentage requirement from Table 1.3 for an asset with a short-term credit rating from a given NRSRO will be based on the remaining maturity of the asset and the long-term credit rating assigned by the same NRSRO to the issuer of the asset.

Although highly unlikely, there are also occasional situations where the issuer of a short-term instrument with a short-term credit rating from an NRSRO does not issue long-term instruments or has not obtained a long-term credit rating for any long-term instruments and, therefore, will not have a long-term credit rating from an NRSRO. In this situation, § 932.4(e)(2)(ii)(C) of the final rule states that the long-term equivalent rating will be determined as follows:

(*1*) The highest short-term rating shall be equivalent to the third highest long-term rating; (*2*) The second highest short-term rating shall be equivalent to the fourth highest long-term rating; (*3*) The third highest short-term rating shall be equivalent to the fourth highest long-term rating; and (*4*) If the short-term rating is downgraded to below investment grade after acquisition by the Bank, the short-term rating shall be equivalent to the second highest below investment grade long-term rating.

This approach is consistent with the research discussed above. The provision regarding downgrades of short-term credit ratings is also consistent with the way that downgrades of long-term ratings are addressed under Table 1.3.

Credit equivalent amounts for off-balance sheet items. As proposed, § 932.4(f), would have required the Banks to convert all off-balance sheet credit exposures into equivalent on-balance sheet credit exposures or credit equivalent amounts, determine the type of the item, and then apply the appropriate credit risk percentage requirement from the tables to estimate the instrument's credit risk capital charge. The proposed rule would have allowed the Banks to use Finance Board approved internal models to convert some or all off-balance sheet credit exposures into on-balance sheet credit equivalents. For Banks that lack appropriate internal models, the proposed rule provided a table of credit conversion factors for off-balance sheet items. The Finance Board received no comments on the specific credit conversion factors in Table 2 of the proposed rule. The Finance Board, however, has incorporated certain changes to Table 2, as discussed below, and has adopted § 932.4(f) with these changes.

Table 2 in the proposed rule provided a 100 percent credit conversion factor for four separate categories: asset sales with recourse where the credit risk remains with the Bank, sale and repurchase agreements, forward asset purchases, and commitments to make advances or other loans. However, if a Bank treats sale and repurchase agreements as an off-balance sheet item, then the Bank would actually report such agreements as asset sales with recourse where the credit risk remains with the Bank. Because any off-balance sheet sale and repurchase agreements are reported under the category ''asset sales with recourse where the credit risk remains with the Bank,'' a separate category in Table 2 for ''sale and repurchase agreements'' is redundant and has been removed. Additionally, under SFAS 133, forward asset purchases will qualify as derivative contracts and will appear on the balance sheet. In any case, derivative contracts are addressed independently of off-balance sheet items under § 932.4(d). Therefore, the forward asset purchases category has also been removed from Table 2.

Commitments to make advances or other loans has been expanded into two categories: commitments to make advances, and commitments to make or purchase other loans. This change recognizes the fact that under AMA programs, the Banks may enter into certain commitments to purchase loans that may be recorded as off-balance sheet items.

The Finance Board received one comment regarding standby letters of credit (SLOCs), an off-balance sheet item included in Table 2 with a credit conversion factor of 50 percent. The commenter apparently believed that under the proposed rule, the credit risk percentage requirement for this off-balance sheet item would be determined by applying the credit conversion factor and finding the appropriate credit risk percentage requirement in Table 1.3 (Requirement for Rated Assets or Rated Items other than Advances or Residential Mortgage Assets). The commenter argued that because SLOCs are in fact ''contingent advances,'' the credit risk percentage requirement should be the same as advances as presented in Table 1.1 (Requirement for Advances). The Finance Board intended that the credit risk percentage requirement for SLOCs would be determined from Table 1.1. In fact, the proposed **SUPPLEMENTARY INFORMATION** section of the proposed rule indicated that SLOCs were given a 50 percent conversion factor, rather than the 100 percent conversion factor assigned to SLOCs by federal banking regulators, because SLOCs issued by the Banks are rarely drawn down and if drawn down, would convert to an advance. See 65 FR at 43425. The Finance Board concurs with the commenter, and the final rule has been changed to clarify that Table 1.1 should be used in determining the credit risk percentage requirement applicable to the credit equivalent amount of any Bank SLOCs.

Reduced credit risk charge for assets hedged with credit derivatives. The proposed rule would have allowed assets hedged with credit derivatives to be assigned a zero credit risk capital charge under limited circumstances. These were: (1) if the asset referenced in the credit derivative (referenced asset) and the hedged asset were the same and the remaining maturity of the hedged asset and the credit derivative was the same; (2) the hedged asset and the referenced asset were the same but the remaining maturity of the hedged asset and the credit derivative were different, but only if the remaining maturity of the credit derivative was two years or more; and (3) if the remaining maturity of the hedged asset and the credit derivative contract was the same, and the hedged asset and the referenced asset were different but only if certain additional conditions were met. In all these cases, the proposed rule would have required the applicable credit risk capital charge for the credit derivative contract to be applied. The Finance Board requested general comments regarding the treatment of credit derivatives and specific comments regarding the methodology that should be used to incorporate the benefit of credit derivatives that did not meet the three circumstances described above. *See* 65 FR at 43426. The Finance Board received no specific comments regarding its treatment of credit derivatives in the proposed capital rule. However, the Finance Board has

realized that its approach may have been somewhat inconsistent with its approach to collateral and third parties guarantees, which allowed for a proportional reduction in the credit risk capital charge on an asset if the collateral or guarantee did not cover 100 percent of the book value of the asset. The Finance Board, therefore, has refined its approach to credit derivatives in the final rule to allow a similar proportional reduction in the credit risk capital charge for assets partially hedged with a credit derivative, under appropriate conditions. This refinement is based on discussions with other financial regulators and a review of proposals by organizations representing capital market participants, such as the International Swaps and Derivatives Association (ISDA). The final rule otherwise retains an emphasis on recognizing credit derivative activities only if they are undertaken in a clear and straightforward manner and used to reduce the credit risk of specific assets. For example, the new approach does not incorporate the use of internal credit models. Further, while the change adds to the consistency in treatment in the capital rule between credit derivatives and other types of credit enhancements, such as collateral and third party guarantees, the change adopted in the final rule, in practical terms, is likely to have little or no effect on the Banks' overall credit risk capital requirement at this time, because the Banks presently have few, if any, credit derivatives on their balance sheets.

The Finance Board also adopted in the final rule an additional general condition governing whether a credit derivative can be used to reduce the capital charge on an asset. Specifically, the final rule requires a credit derivative contract to provide substantial protection against credit losses before the reduction can be taken. Because credit derivative contracts are bilaterally negotiated, the Finance Board believes that in some rare circumstances conditions may be added to the contract that may call into question the ability of the Bank to collect, under all likely scenarios, the amount expected under the credit derivative contract, if there were a default on the hedged asset. Further, there may be questions as to the ability of the counterparty to actually fulfill the terms of the credit derivative contract. The Finance Board, therefore, has added as a safeguard, the condition that the credit derivative contract provide substantial protection against credit losses. As already discussed, the Finance Board does not think that this condition would affect the beneficial treatment afforded relatively straightforward credit derivative instruments under most circumstances.

Under the final rule, as in the proposed rule, credit derivatives that are referenced to an asset that perfectly matches the asset being hedged may fully offset the credit risk capital charge of the hedged asset, if the credit derivative has a remaining maturity equal to or greater than that of the hedged asset. A credit risk capital charge for the credit derivative must still be applied, however to account for the Bank's credit exposure to the credit derivative counterparty. For example, if a Bank purchases a triple-B-rated corporate bond with a remaining maturity of five years and at the same time enters into a 5-year credit default option contract based on the same bond, the credit risk capital charge for the underlying asset will be zero. The net credit risk capital charge for the pair will equal the credit risk capital charge for the credit exposure on the derivative contract.

This same treatment may be accorded positions in which the credit derivative contract references a different obligation from the same obligor but only if: (1) the credit derivative contract has the same or a longer remaining maturity as the hedged asset; and (2) the referenced asset ranks *pari passu* or junior to the hedged asset, is subject to a cross-default clause with the hedged asset and has the same maturity as the hedged asset. These conditions on the referenced asset are the same in the final rule as in the proposed rule except for one new condition that the referenced asset and the hedged asset have the same remaining maturity. This new condition helps assure that the value of the hedged asset and the credit derivative will move in a similar fashion.

The final rule expands upon the relief offered in the proposed rule by allowing a Bank to take a proportionally reduced capital charge for an asset hedged with a credit derivative even if the remaining maturity of the credit derivative is less than that of the hedged asset. However, the credit derivative must have a remaining maturity of at least one year for this new provision to be applied. The requirement that credit derivatives with a shorter remaining maturity than the hedged asset have at least a one-year minimum remaining maturity is more strict than the six month minimum remaining maturity that has been suggested in work done by ISDA for similar circumstances, but is less strict than the two-year minimum requirement that was applied under the proposed rule. The Finance Board believes that the one-year minimum requirement is in line with the generally conservative approach adopted in this rule.

Further, the beneficial treatment allowed when calculating a hedged asset's credit risk capital charge if the applicable credit derivative contract has a remaining maturity less than that of the hedged asset may be applied if the hedged asset and the referenced asset are the same. This treatment may also be applied if the hedged asset and the referenced asset are different but only if the referenced asset ranks *pari passu* or junior to the hedged on-balance sheet asset, is subject to a cross-default clause with the hedged on-balance sheet asset and has the same maturity as the hedged asset. Where the above conditions are met, the credit risk capital charge for an asset hedged with a credit derivative that has a remaining maturity less than that of the hedged asset will equal the sum of the capital charges for the unhedged portion of the asset and the hedged portion of the asset.

For example, assume a Bank holds a triple-B-rated corporate bond with a remaining maturity of 5 years and has hedged that position with a credit derivative that is referenced to the same corporate bond but that has a remaining maturity of two years. Under the final rule, the capital charge for the unhedged portion of the asset would equal the credit risk percentage requirement for the asset, assigned based on its credit rating (BBB) and remaining maturity (5 years), multiplied by the book value of the asset minus the product of the credit risk percentage requirement for the asset, assigned based on its credit rating (BBB) but on the remaining maturity of the credit derivative contract (2 years), multiplied by the book value of the asset. The credit risk capital charge for the hedged portion of the asset will equal the credit risk capital charge for the credit derivative contract, calculated in accordance with § 932.4(d) of the final rule.

As in the proposed rule, where the on-balance sheet asset and the asset referenced in the credit derivative have been issued by different obligors, the final rule does not provide capital relief for the underlying asset. *See* 65 FR at 43426. In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board requested comment on whether it should allow Banks to petition for relief on a case-by-case basis on the credit risk capital charge applied to assets hedged with credit derivatives but that do not meet the specific conditions set forth in the rule, if the petition is accompanied by adequate data and analysis. *Id.*

Although no specific comments were received in response to this request, the Finance Board believes that Banks should be allowed to seek such relief. The Finance Board emphasizes that any petition for relief must be accompanied by evidence that demonstrates with a high degree of certainty that the credit derivative contract will provide protection should there be a default on the hedged asset. The Finance Board also emphasizes that it will be conservative in its approach when reviewing such petitions and will consider all available evidence including any information about how the situation may be handled by other financial regulators before making any decision.

Reduced charges for derivative contracts. As was proposed, the final rule also allows foreign exchange rate contracts with an original maturity of 14 calendar days or less to be assigned a zero credit risk capital charge. Gold contracts would not be considered exchange rate contracts. Derivative contracts that are traded on regulated exchanges that require daily collection of variation margin for the contract also would be assigned a zero credit risk capital charge.

Section 932.5—Market Risk Capital Requirement

General. As proposed, § 932.5 set forth the basic requirements for calculating each Bank's market risk capital charge. Under the proposed rule, each Bank would be required to develop either an internal market risk model, or as an alternative, a cash flow model, that would calculate the Bank's market risk capital charge and to have the model reviewed and approved by the Finance Board. The proposed rule required the Bank to use its internal market risk model to estimate the market value of its portfolio at risk. As proposed, the market value of the Bank's portfolio at risk would have been defined as the maximum loss in market value of a Bank's portfolio under various stress scenarios. This loss would have been measured from a base line case such that the probability of loss greater than that estimated was not more than one percent. If a Bank opted to use the alternate cash flow model, the proposed rule would have required the Bank to demonstrate that the cash flow model subjected the Bank's portfolio to a degree of stress comparable to that required for the internal market risk model and to demonstrate how the Bank intended to measure its market risk capital charge using the cash flow approach.

When using an internal market risk model, the proposed rule further stipulated that the Bank's capital charge would equal the sum of two components: the capital charge estimated by the Bank's internal market risk or cash flow model plus the amount by which the current market value of a Bank's total capital was less than 95 percent of the value of the Bank's total capital calculated in accordance with the GLB Act (the 95 percent test). The proposed rule also would have required the Banks to conduct an annual, independent validation of its internal market risk model or internal cash flow model and submit the results of the validation to the Finance Board.

The proposed rule also established broad parameters and standards for the internal risk model and for the stress testing that would be performed using that model. In general, the proposed rule would have required the Bank's internal risk model to cover all material risks arising from a Bank's portfolio of assets, liabilities and off-balance sheet items, including derivative contracts and options. As contemplated by the proposed rule, the Bank would have used the internal market risk model first to estimate the market value of its portfolio as of the last business day of the month for which the market risk capital charge was being calculated and then to stress that baseline market value to calculate the market value of its portfolio at risk. The proposed rule also required that the stress test account for changes in interest rates, interest rate volatility, the shape of the yield curve and changes in market prices equivalent to those that have been observed over 120 business-day periods of market stress. Under the proposed rule, the relevant historic observation period would have begun at the end of the month prior to the month for which the market risk charge was being calculated and extend back to 1978. Further, if the Bank had issued consolidated obligations denominated in foreign currency or linked to equity or commodity prices, the proposed rule would have required the Bank to estimate the market value of its portfolio at risk due to changes in foreign exchange rates, and equity and commodity prices as relevant.

The Finance Board received a large number of comments on proposed § 932.5. Generally, most commenters objected to a market risk capital charge based on changes in market value of a Bank's portfolio as inappropriate given that the Banks hold their assets to maturity. For similar reasons, commenters objected to the Finance Board requiring use of a value-at-risk (VAR) model for calculating the capital charge. Almost all commenters also expressed opposition to the 95 percent test for a number of reasons, including that the test ''double charged'' the Banks for market risks and that the ''artificial'' volatility in GAAP earnings created by implementation of SFAS 133 could make it difficult for Banks to comply with the 95 percent test. Comments were also received on a number of other aspects of the proposed market risk requirement. The Finance Board has considered all the comments received on proposed § 932.5 and will address these comments in more detail below.

Furthermore, the Finance Board has determined to make a number of changes to the proposed rule both in response to comments and based upon its reconsideration of certain aspects of the proposal. The Finance Board discusses these changes more fully below. Among the more important changes, the final rule has revised the 95 percent test so that it now requires a Bank to calculate its market risk capital charge by adding the market value of its portfolio at risk and the amount, if any, by which the market value of the Bank's total capital, estimated using its internal market risk model, falls below 85 percent of the value of the Bank's total capital as defined in the GLB Act (85 percent test). In addition, the final rule explicitly states that the Finance Board may exercise flexibility in determining the appropriate minimum number of scenarios that shall be used in estimating the market value of their portfolio at risk. The Finance Board, however, anticipates increasing the minimum number of required simulations in proportion to the nature and level of market risk taken by the Banks, and as the Banks gain expertise in using their models and available modeling techniques become more sophisticated. Furthermore, as with other provisions, the final rule has revised § 932.5 to reflect the fact that because of SFAS 133, derivatives contracts can no longer be considered strictly off-balance sheet items.

Internal cash flow model. Many commenters expressed a concern that the proposed rule was unclear regarding the conditions under which an internal cash flow model could be substituted for an internal risk model. Additionally, commenters indicated a preference for the final rule to include explicit requirements about the parameters that would be required for such a model.

In response to these comments, the Finance Board has clarified in § 932.5(a)(2) of the final rule that a Bank may use an internal cash flow model in

place of an internal market risk model, provided that the Bank obtains prior Finance Board approval of the internal cash flow model and of the imbedded assumptions in the model. In principle, because both the internal market risk model and the alternate internal cash flow model calculate loss estimates based upon the present value of the cash flows of the current assets and liabilities, the market risk capital requirement should be the same whichever model is used. However, even though the Finance Board expects the two methods to be theoretically consistent, it recognizes that, in practice, it is unlikely that the market risk capital requirements calculated by an approved internal cash flow model would be exactly the same as the requirement calculated by an internal market risk model. Further, and contrary to the perception of some commenters, the Finance Board is not requiring a Bank to develop both an internal market risk model and an internal cash flow model to verify that the market risk capital charges calculated by each are equivalent.

Instead, the Finance Board will review the assumptions and time horizon chosen by a Bank in its internal cash flow model to assure that the model captures all material risks faced by the Bank and that the stress applied by the model is comparable to that required by the modeling parameters and by the 85 percent test set forth in § 932.5(a)(1), (b) and (c) of the final rule. However, the final rule does not require a Bank to apply separately the 85 percent test if the Bank uses an alternative cash flow model.

The Finance Board's review of a Bank's proposed internal cash flow model will focus on the assumptions of the cash flow model concerning future business activities, *e.g.*, the acquisition of new assets and their financing. The assumptions concerning future business activities must be well defined, prudent, and consistent with the Bank's practice. The Finance Board has determined, however, that with respect to the internal cash flow model approach, the final rule adopted herein should not include specific assumptions, parameters, or time horizon requirements in recognition of the possibility that such inputs need not be constant across different portfolios and/or business plans. The Finance Board may judge the adequacy of the model's output in various ways including comparing the estimates produced by the internal cash flow model to modeling results from other Banks which may display similar risk profiles to the Bank seeking approval of an internal cash flow model. The Finance Board will reject an internal cash flow model if after consideration of all relevant factors, it believes that the model fails to calculate an adequate market risk capital charge for a given Bank.

The Finance Board also notes that under the final rule the internal cash flow model will be used to calculate only the market risk capital requirements. A Bank using an internal cash flow model will still calculate its credit risk capital requirements pursuant to § 932.4 of the final rule. Thus, in developing an internal cash flow model, a Bank would want to use the expected cash flows from its assets and not simulate changes in cash flows that would come from changes in credit quality. The expected cash flows, however, could still take into account the credit quality of the asset, *e.g.*, the expected cash flows from a triple A rated bond would be greater than the expected cash flows from a similar single B rated bond.

Measurement of market value at risk under a Bank's internal market risk model. The Finance Board received many comments concerning the requirements for the internal market risk model and its proposed approach for estimating the market value of the Banks' portfolios at risk, including comments from all of the Banks, two trade groups, and a housing GSE. Commenters generally expressed opposition and confusion regarding the type of internal market risk model contemplated under the proposed rule. Several commenters asked for clarification of the definition of market value at risk. Most commenters opposed the use of a traditional VAR framework to measure market risk for the Banks. They expressed concern that the VAR framework, which federal banking regulators require commercial banks to use for their trading portfolios under certain conditions, was inappropriate for the held-to-maturity portfolios that are more characteristic of the Banks. More generally and for similar reasons, a number of commenters felt that it was inappropriate to base the market risk capital charge on changes in the market value of the Banks' portfolios. Several commenters also expressed concern that using a traditional VAR model would result in the Banks holding significantly more capital for market risk than OFHEO requires under its proposed capital regulations for Fannie Mae and Freddie Mac, a result that could put the Banks at a competitive disadvantage to the other housing GSEs. A number of commenters also urged the Finance Board not to express a preference for the VAR-like approach over a cash flow approach.

In proposing § 932.5, the Finance Board did not intend to imply that the Banks were required to use any specified or ''typical'' VAR approach to calculate the market value of their portfolios at risk. Instead, the Finance Board intends that each Bank uses its internal market risk model to undertake a stress test. As envisioned by the Finance Board, the test is applied such that each Bank will first use its internal market risk model to estimate a base case market value for its portfolio, where the portfolio would consist of all of the Bank's assets and liabilities, off-balance sheet items and derivative contracts. In estimating this base case market value, each Bank's internal risk models could employ actual market prices, and assumptions and methodologies for estimating the value or prices of instruments that would be consistent with approaches that are generally accepted in the financial industry. Then, each Bank will use the internal market risk model to apply market shock scenarios that are based on historical scenarios and data, as specified in § 932.5(b)(4) and (b)(5) of the final rule. The model-derived portion of the market risk capital charge (*i.e.*, the market value of a Bank's portfolio at risk) equals the loss in the market value of a Bank's portfolio measured from a base line case, as determined from market-value loss calculations that are based on more than 20 years of historical experience and that must include an adequate number of stress scenarios derived from these historically stressful periods, such that the probability of loss greater than the determined amount is not more than one percent. This approach generally differs from the traditional VAR approach, which estimates the potential loss of a portfolio given relatively more current market conditions.

Furthermore, the Finance Board believes that estimating the market risk charge based on a stress test of the kind described above is reasonable, even when, as the commenters stated, the Banks' portfolios consist largely of ''held-to-maturity'' instruments. From a regulatory perspective, the Finance Board is concerned that the Banks hold sufficient capital to withstand historically extreme market conditions that may persist over multi-year periods. The market-value approach adopted in this final rule satisfies this regulatory concern. Specifically, the measure of a decline in market value during a stress period incorporates the decline in long-term earnings that would result, all things being equal, from such market

changes. In this respect, the market-value approach parallels the way the debt markets bid up or down the value of a financial instrument based on its expected earnings relative to the yield expectations of similar instruments in the current market. The arguments voiced by commenters that the Finance Board's approach misstates the capital charge for ''held-to-maturity'' assets, relies on the expectation that a Bank could regain lost market value if markets ''returned to normal'' following any stressful conditions. The weakness of this argument is that a Bank must risk further declines in market value in order to position itself to gain from ''expected'' market corrections. Thus, for the purposes of the Market Risk Capital Requirement, it is irrelevant that the Bank may generally hold its assets to maturity because the regulator is concerned with, and must address, the likelihood that the market will not behave ''as expected'' and that the losses in market value will eventually be realized through earnings over time. By requiring that an acceptable internal cash flow model subject a Bank's portfolio to a comparable degree of stress as that required for the internal market risk model, the Finance Board also intends to ensure that these regulatory goals are met if a Bank decides to use an internal cash flow model to estimate its market risk capital charge. As was explained in the discussion of the Minimum Risk-Based Capital Requirement, the Finance Board also does not believe that the market-value approach will lead to an onerous market risk capital charge. Given its regulatory goals, the Finance Board, therefore, continues to believe that its general approach to the internal market risk model adopted in the final rule is reasonable.[24]

A few commenters believed that the 120 business day holding period stipulated for the stress test in proposed § 932.5 was excessive. At least one commenter based this view on the fact that most VAR models stipulate a holding period of only one or two days. As already discussed, § 932.5 of the final rule does not mandate a specific VAR approach for estimating the market value of its portfolio at risk. Nevertheless, the 120 business day horizon is also within the range of the holding periods adopted by other federal bank regulatory agencies for the VAR models used in their market risk test, which, once the mandated multiplier is taken into account, is effectively between 90 and 160 days.[25] Moreover, the Finance Board believes that the 120 business day holding period is reasonable given the goal underlying the market risk capital charge discussed above. For these reasons, the Finance Board remains satisfied that the mandated 120 business day holding period stipulated for the internal market risk model is the correct approach.

A number of commenters requested clarification as to when a Bank should apply the required stress test using a historical simulation approach or when it should use a path-generating approach such as Monte Carlo simulations. In both the proposed and final rule, § 932.5(b)(2) provides that a Bank may use any ''generally accepted measurement technique'' in its modeling approach. The choice of an approach is subject to the general requirement that the internal market risk model be able to capture all material market risks faced by the Bank. In this regard, the Finance Board has determined that simulations of historical market changes will comply with the regulation. Historical simulations may assume rate changes as a percentage of the prior rate level rather than as changes in the absolute level of the index in question. The Finance Board has also determined that such simulations should encompass market changes for all instruments and indexes. In doing so, such simulation will address general changes in interest rates and basis differences.

The parameters for a Monte Carlo rate path generating process would be derived from and consistent with periods of market stress identified from the same historical time-frame and data, which stretches from 1978 to the month prior to the month for which a market risk capital charge is being calculated, as provided in § 932.5(b)(4) and (5) of the final rule, that would be used in a historical simulation. The process should generate a sufficient number of paths to estimate the 99th percentile in the distribution of losses for the market value of a Bank's portfolio at risk using the same types of calculations as those used in an historical simulation.

Commenters have also asked for guidance on how the Finance Board intends to define material risks. In general, a material risk is any risk that has a potential, substantive effect on a Bank's earnings or capital portfolio, or could potentially have a significant impact on the Bank's market risk capital charge from a regulatory prospective. A determination concerning the materiality of specific risks would include consideration of a Bank's general risk profile and relevant historic data and experience.

Along these same lines, some commenters expressed concern that the Finance Board has not provided sufficient technical specifications for the internal market risk model. As a result, some commenters felt that the Banks cannot be sure if the models used for day-to-day risk management purposes would be sufficient for calculating the market risk capital charge, and at least one commenter believed that without more specificity it would be impossible to judge the adequacy of the market risk capital requirements. The quantitative modeling parameters provided by the Finance Board in the proposed and final rule are consistent with those provided by other Bank regulators for required market risk models. *See* 61 FR 47358 (Sept. 6, 1996). The Finance Board believes that the quantitative specifications set forth in the final rule provide a degree of flexibility for the Banks in developing their models, yet ensures that the Banks will hold a prudential level of capital with respect to their market risk and that the market risk capital charges will be consistent across the twelve Banks. Further, the adequacy of both the models and the estimates of the market risk produced by those models will be assured through supervisory oversight and the requirement that the Finance Board approve both the Banks' internal models and any subsequent material adjustment to the models. In addition, the Finance Board expects that there will be on-going dialogue between the staffs of the Finance Board and the Banks during the developments of the internal risk-based models so that formal or informal guidance may be provided on issues such as the sufficiency of individual modeling efforts.

The Finance Board has also reconsidered some aspects of proposed § 932.5 and has determined to make some changes in the final rule. Primarily, the Finance Board has changed the criteria in proposed § 932.5(b)(4)(ii) regarding the data time series from which a Bank must draw the relevant historical scenarios in

[24] The Finance Board provides additional background information about the modeling requirement in the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** release proposing the capital rule. This information helps further clarify the Finance Board's reasoning for adopting the internal market risk model approach in this final rule. *See* 65 FR at 43427–29.

[25] The federal bank regulatory agencies (Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), and Federal Deposit Insurance Corporation (FDIC)) issued a joint final rule in September 1996 to incorporate a measure for market risk, effective as of January 1, 1998. See 61 FR 47358 (Sept. 6, 1996).

executing a stress test. The change provides greater flexibility for the Finance Board to determine an appropriate minimum number of scenarios to be used in the modeling exercise, but intends that the minimum number of scenarios shall be increased as the Bank's risk exposure increases and as the Bank's expertise and the general sophistication of available modeling technology improves. As proposed, the criteria in § 932.5(b)(4)(ii) required an unspecified number of tests to cover the relevant data period from 1978 until the present.[26] The Finance Board recognizes that this requirement may have created a great hardship for the Banks as they try to conform their modeling technology and capabilities to the requirements of the capital rule. The changes to § 932.5(b)(4)(ii) in the final rule are intended to allow the Finance Board to require a Federal Home Loan Bank to use a minimum acceptable but manageable number of scenarios. The periods chosen, however, must be satisfactory to the Finance Board, encompass the periods of the greatest potential market stress, given a Bank's portfolio and the data from the period of 1978 to the month prior to the month for which the market risk capital charge is being calculated, and be comprehensive given the modeling capabilities available to the Bank. The Finance Board will judge whether a Bank's given choice of historic scenarios is comprehensive, based not only on the Bank's internal capabilities at any point in time, but also on the state-of-the-art modeling technology and theory employed by other Banks and within the financial industry, generally. In addition, the Banks will be expected to increase steadily over time the number of scenarios used in calculating the market risk capital charge. The Finance Board will monitor compliance with the requirements of § 932.5(b)(4)(ii) through its general supervisory oversight, and a Bank will not be required to seek specific Finance Board approval each time it increases the number of scenarios used unless the change involves a material adjustment to the model. However, Banks will be expected to defend their choice of stress scenarios and document that their choice meets the requirements of § 932.5(b)(4)(ii).

A similar change has been made to 932.5(b)(5)(iii) to conform the requirements for the stress scenarios used to model foreign exchange, and equity and commodity price risk to those used for interest rate risks. Section 932.5(b)(5)(iii), however, only applies if a Bank has issued consolidated obligations denominated in a foreign currency or linked to equity or commodity prices, and the resulting relevant foreign exchange or equity or commodity price risk is material.

The Finance Board has also changed the final rule to remove a reference which suggested that a Bank had to seek specific approval for empirical correlations included in its model (*i.e.,* approval beyond that required in the final rule under § 932.5(d)). Instead, the Finance Board intends to review the theoretical and empirical basis for including any correlations among variables in the internal model as part of its initial approval of the model or its subsequent approval of any material adjustments to the model. In general, additions of, or adjustments to, correlations used in the model would be considered a material adjustment by the Finance Board.

Basis Risk. In the proposed rule, the Finance Board specifically requested comment on how best to treat basis risk in the final rule. The Finance Board received several comments on basis risk. One commenter suggested that basis risk is not significant enough to require special modeling and capital charges. Another commenter suggested that each Bank should establish its own basis risk management framework, and the Finance Board should review this framework as part of its examination process. However, a review of historical rate changes indicated that some periods of stressful markets were characterized, not only by changes in the general level of rates, but also by significant changes in the relative spread between indices that affect financial positions held by the Banks. The Finance Board, therefore, has determined that basis risk is a material risk for the Banks and should be incorporated into the stress tests. Furthermore, the Finance Board believes that the historical simulation approach that the Banks are most likely to employ, at least initially, can reasonably incorporate the changes in the different market indexes that most affect the Banks' financial strength, and thereby can adequately incorporate basis risk into the required stress tests.

The 95 percent test. As discussed briefly above, the Finance Board received many comments on the proposed 95 percent test. All commenters were generally opposed to the inclusion of the 95 percent test in the market risk capital requirement, often claiming that the proposed test was not required by other financial institutions or was unnecessary from a safety and soundness perspective.

One commenter stated that if the intention of the requirement was to ensure that Bank management takes appropriate action when a Bank's market value of capital falls below some threshold, the proposed requirement may actually exacerbate the problem. If the Bank were forced to increase its market risk capital requirement when its market value deteriorates, then, according to the commenter, the Bank would have the incentive to further increase risk to generate an acceptable return on the additional capital.[27] Commenters suggest that rather than including the 95 percent market to book value test in the rule, the Finance Board should consider requiring that each Bank's Risk Management Policy establish a threshold market to book value of capital ratio that would require the Bank's board of directors to review and determine a plan of action if necessary.

Several commenters stated that while such a requirement may have some conceptual appeal, potential adverse effects outweighed any benefits. They argued that the required test forces a mark-to-market accounting framework on the Banks which are primarily required to report their financial condition on an accrual basis under GAAP and that the conflicting requirements to reconcile accounting conventions to market valuation could lead to adverse consequences. They cite the implementation of SFAS 133 where a Bank may face asymmetrical accounting of its hedged positions that could lead to an increase in book value without any change in a Bank's market value and, therefore, a decrease in the Bank's market to book value below the 95 percent requirement without any change in its underlying economic risk. One commenter, however, agreed that it was ''prudent to mandate that capital be held to assure an adequate market to book value capital ratio,'' but suggested that the test should require a ratio of market to book value of 85 percent.

[26] As proposed and adopted, the relevant historical period set forth in the capital rule by the Finance Board would encompass the period from the beginning of 1978 to the end of the month prior to the month for which the capital charge is being calculated. Each 120 business day period would start at the first of each month. Thus, the first stress period would run from January 1, 1978 forward 120 business days, the second, February 1, 1978 forward 120 business days, etc. The 1978 date was selected to ensure that the most stressful period in recent times is included. 65 FR at 43429.

[27] The commenter failed to recognize that if a Bank actually engaged in the type of behavior described, its risk-based capital requirement would rise in relation to the added risk incurred. Thus, the Finance Board does not believe that the 85 percent test adopted in the final rule will create a perverse incentive as described by the commenter.

The Finance Board finds merit in some of the concerns expressed by the commenters, especially those related to the potential effects of SFAS 133 on the Banks' balance sheets. Therefore, the Finance Board has adopted the one commenter's suggestion and has changed the final rule so that in calculating the market risk capital charge a Bank will have to add to the market risk charge estimated by its internal market risk model the amount, if any, that the market value of its total capital falls below 85 percent of the book value of its total capital.

The final rule has also been changed to make clear that in applying the 85 percent test, what the proposed rule referred to as ''the book value of total capital'' is the value of total capital required to be reported to the Finance Board under § 932.7 of the final rule and for other regulatory purposes. The Finance Board also wishes to clarify that in applying the 85 percent test, the market value of total capital should be calculated using the Bank's internal market risk model and should be equal to the value of total capital as estimated for the base case market value of a Bank's portfolio (*i.e.*, the value before applying the required stress scenarios).

While the Finance Board has made some changes to the proposed market-to-book value capital test in the final rule, the Finance Board continues to believe that a capital charge is needed to protect against a significant impairment in a Bank's market value of capital, to the extent that it is not reflected in the reported values of total and permanent capital. The provisions of the final rule require a Bank to measure and report its capital adequacy based upon the book value of total or permanent capital, calculated in accordance with GAAP. It is precisely because the Banks have large portfolios of long-term on- and off-balance sheet positions that are held-to maturity, which under GAAP would generally be valued at historic cost, that a Bank's financial strength, expressed by its market value of capital, can decline significantly without that decline being reflected in the Bank's book value of capital. A market-to-book value capital test assures that the reported values of total and permanent capital are representative of the value of the capital available to absorb losses should a Bank have to liquidate or unwind its positions at any given point in time.

Moreover, contrary to some comments, the portion of capital charge calculated using the internal market risk model (*i.e.*, the market value of the Bank's portfolio at risk) does not, in the absence of the 85 percent test, adequately protect for a decline in the market value of a Bank's total and permanent capital. As discussed above, the market value of a Bank's portfolio at risk equals the maximum loss between a baseline calculation, which estimates the current market value of a Bank's portfolio as of a certain date, and the worst case loss derived from among all the shock scenarios, where the probability of loss greater than that estimated does not exceed one percent. Because the baseline starting point for the stress test is based on current market value, the stress test does not account for any decline that may have occurred between the book value of capital and the market value of capital as estimated for the baseline starting point. However, the 85 percent test, as adopted in the final rule, is stipulated so that the market value of total capital used in the test equals the market value of total capital determined by the model for the baseline (pre-shock) case.

Based on the above reasoning, the Finance Board believes that the 85 percent test, as adopted, covers the Bank against excessive declines in the current market value of capital while being flexible enough to assure that normal fluctuations in market values do not lead to excessive volatility in the required market risk capital charge.

Independent validation of a Bank's internal market risk model or cash flow model. Section 932.5(c) of the proposed rule would have required each Bank to conduct, on an annual basis, an independent validation of its internal market risk model or internal cash flow model. The validation would have to be carried out by personnel not reporting to the business line responsible for conducting business transactions for the Bank or by an outside party qualified to make such determinations. The proposed rule would have required the results of the independent validation to be reviewed by each Bank's board of directors and provided to the Finance Board. As discussed below, the Finance Board has considered the comments received on the validation requirement and continues to believe that the validation requirement is necessary to assure the continued adequacy of each Bank's internal market risk model or internal cash flow model. In addition, the Finance Board does not view the requirement as unduly burdensome given the critical function that the internal models perform. Therefore, the annual validation requirement has been adopted as proposed.

Generally, commenters asked for clarification of the minimum criteria that should be used in the model validation process. One commenter stated that the requirement to validate the model annually was excessive and suggested that conducting the validation every two years would be more practical. Another commenter suggested that the rule should explicitly allow the validation to be performed by either an outside party or the Bank's internal audit department as long as whoever performs the validation demonstrates appropriate expertise. Another commenter asked whether a letter from a recognized expert in the area of market risk will satisfy the validation requirement or whether each Bank must provide a detailed report.

Given that each Bank most likely will have a market risk model that is customized to its needs and given the expected evolution of sophistication in market risk modeling, the Finance Board does not believe that it is appropriate to provide a list of minimum criteria for the validation process in the rule. However, in view of the comments, following is a general discussion of the validation process as contemplated by the Finance Board at this time.

The Banks should establish a systematic validation procedure. This procedure should take into account the complexity and sensitivity of the Banks' instruments, the level of overall market risk and the Banks' proximity to capital limits. The procedure should include testing, review of input procedures, review of specific modeling assumptions, and review of modeling methodology. Some longer-term planning should also be involved in the validation process so that over a two or three year cycle all major assumptions and components of the model are subject to review and rigorous testing. Further, the Finance Board expects that Banks will treat the validation exercise as an on-going process throughout the year and not confine the exercise to a narrow, few-week period.

The Finance Board also does not intend that Banks back-test the full model, as is often required for traditional VAR models. However, the Banks should have criteria and procedures for reviewing significant variations between the estimations generated by the model and actual changes in the value of the Bank's portfolio or its income. In general, significant unexplained variances should result in an expansion of the scope of the validation and review process. The validation process should be documented, including documenting any reviewer-recommended action, findings, analysis, or any responses to identified problems taken by the Bank and any other relevant supporting

information. However, the Finance Board would expect each Bank only to submit a letter confirming that the required validation exercise has been completed for a given year and highlighting any problems that may have been identified and any actions that were taken by the board of directors in response. The more extensive documentation, however, should be available for inspection by Finance Board staff. As with other aspects of the § 932.5 requirements, the Finance Board expects that the staff of the Banks and the Finance Board will maintain an on-going discussion of the validation process so that the Banks can be provided with informal or formal guidance on issues that arise.

The final rule also retains the requirement that the independent valuation must be conducted by personnel not reporting to the business line responsible for conducting business transactions for the Bank or by an outside party qualified to make such determinations. The Finance Board believes that this language implies that the validation may be conducted by personnel from the Bank's internal audit department, if qualified, and that it is not necessary to explicitly state so in the rule. Given the newness of the modeling requirement and the rapid evolution of model sophistication, the Finance Board does not consider the validation requirement as clarified here to be overly burdensome.

Section 932.6—Operations Risk.

Operations risk is the risk of an unexpected loss resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems. As proposed, § 932.6 provided that each Bank's operations risk capital requirement would equal 30 percent of the sum of the Bank's credit and market risk capital requirements, but would have allowed a Bank to substitute an alternative methodology for calculating the operations risk charge if such methodology was approved by the Finance Board. The proposed rule also allowed a Bank, with Finance Board approval, to reduce the operations risk capital requirement by obtaining insurance to cover it for operations risk. In no event, however, would a Bank have been permitted to reduce its capital charge for operations risk to less than 10 percent of the sum of its credit and market risk requirements.

Almost all of the comments received by the Finance Board addressed the proposed operations risk capital charge. Commenters generally disagreed with at least some aspect of the proposed requirement, although one trade association supported the proposal as reasonable. One of the most often voiced comment was that the Finance Board lacked a sound theoretical basis for linking operations risk to market and credit risk. One commenter noted, however, that this approach had some support in regulatory circles. A number of commenters felt that a charge equal to 30 percent of the market and credit risk charges was too onerous, either as a percentage or in absolute terms. A few commenters welcomed the flexibility afforded by proposed § 932.6(b) to allow the Banks to develop alternative methods of measuring the operations risk capital charge. A substantial number of commenters also requested that the operations risk charge be eliminated from the capital regulation altogether. After considering all of the comments received, the Finance Board is not persuaded that the operations risk charge should be eliminated and has decided to adopt the regulation as proposed.

In the proposed rule, the Finance Board stated that although not required by the GLB Act, the operations risk capital charge was necessary to assure that the Banks remained adequately capitalized and able to operate in a safe and sound manner. The Finance Board noted that the credit and market risk capital charges in the proposed rule were not meant to cover unexpected losses that may arise from operations failures, and that a separate capital charge was needed to protect the Banks from such losses. *See* 65 FR at 43420–21. The Finance Board continues to believe that an operations risk capital charge is a necessary part of any complete and adequate risk-based capital regulation, and therefore, that it is authorized to adopt the operations risk capital charge in fulfillment of its statutory duties to assure that the Banks ''operate in a financially safe and sound manner'' and ''remain adequately capitalized.'' 12 U.S.C. 1422a(a)(3)(A) and (B), 1422b.

Moreover, in proposing the operations risk charge, the Finance Board recognized that there are theoretical difficulties in measuring operations risk. As a number of commenters pointed out, the Finance Board stated in the preamble to the proposed regulation that there was ''currently no generally accepted methodology for measuring the magnitude of operations risk.'' 65 FR at 43429. However, in acknowledging a lack of consensus concerning a methodology for quantifying operations risk, the Finance Board was not in any way conceding that difficulties in measuring operations risk either lessened the potential for losses from such risks, or reduced the importance of mandating an adequate operations risk capital charge. Further, while many commenters questioned the theoretical basis for the operations risk charge, none provided alternative empirical methods or analysis for quantifying operations risk or assessing an adequate operations risk charge.

Given the difficulties in measuring operations risk, the Finance Board proposed to use the same approach to operations risk as that provided for Fannie Mae and Freddie Mac by statute, 12 U.S.C. 4611(c)(2), reasoning that Congress considered and deemed reasonable for regulatory purposes a linkage between an operations risk charge and credit and market risk charges. The Finance Board continues to believe that the statutory requirement established for the other housing GSEs provides a reasonable basis for assessing an operations risk charge. Further, in allowing a Bank to reduce its operations risk charge by providing an alternative method for calculating the operation risk charge, the regulation affords the Banks an opportunity to demonstrate that their operations are less risky than the other housing GSEs or that their business lines present little operations risk, and thereby, qualify for a lower operations risk charge.

One of the housing GSEs criticized the provision of the proposed rule that would allow the Banks to reduce their operations risk charges, stating that it would significantly reduce a Bank's capital. Instead, the GSE suggested that the Finance Board compare the Banks' operations risks to those of leading financial institutions and allow for a reduction in the operations risk charge only if a Bank could demonstrate that it exceeds best practices with regard to controlling such risks. In response to this comment, the Finance Board wishes to clarify that before it will approve an alternative methodology for measuring operations risk under § 932.6(b) of the final rule, it will expect a Bank to demonstrate, using a comprehensive, empirically-based approach, that the alternative methodology adequately quantifies the Bank's operations risk. Any analysis would have to take into account the complexity of a particular Bank's business and hedging activities as well as its internal controls, in-house expertise and other factors that relate to operations risks. Similarly, in order to receive a reduction in the operations risk charge for insurance, the Bank would have to demonstrate that the insurance covers the specific risks faced by the Bank and provide a comprehensive analysis to justify the

reduction in the operations risk requirement sought by the Bank. While the Finance Board will be flexible in the types of approaches that it is willing to consider under § 932.6(b), it expects rigorous analysis to support any Bank claims before it will approve a reduced capital charge for operations risk, and will in every case require the Banks to hold operations risk capital equal to at least ten percent of credit and market risk. Therefore, the Finance Board believes that the flexibility provided in 932.6(b) will be consistent with achieving sound levels of capital for the Banks.

A few commenters also criticized the approach proposed in § 932.6(b) as not being flexible enough and suggested that that the regulation should allow a Bank to decrease its operations risk charge to zero, where justified. They believed that the ten percent minimum charge would create a disincentive for the Banks to insure against operations risk or take added steps to control operations risk. However, in general, a business can not realistically expect to identify or eliminate all potential losses from computer ''glitches,'' human error, fraud, natural disasters or other similar unforeseen, and in many cases, uncontrollable events. Nor does it appear possible to insure against events that may arise as part of new technology, new business processes or that otherwise may not be identified at any point in time. Thus, the Finance Board believes that it would be unrealistic, and in the long-run unsafe, to remove the minimum operations risk charge contained in the rule. Further, the Finance Board believes that the ten-percent floor is in keeping with its conservative approach to assessing capital charges.

A substantial number of commenters felt that the operations risk charge was too high and should be reduced or eliminated. A number of commenters urged the Finance Board to delete the operations risk charge and instead, to rely on its supervisory oversight to protect the Bank System against this risk. While supervision is an important component of any regulatory system, the changes mandated by the GLB Act require a Bank to hold capital against the losses from the risks that it faces. This assures that the enterprise, *i.e.,* the Bank System, and not taxpayers generally, will bear the risk associated with the Banks' activities and operations. Thus, consistent with this goal of the GLB Act, the Finance Board believes that permanent capital should be held by a Bank against potential losses arising from operations risk, and that the Finance Board should not rely solely on a supervisory approach to guard against such losses.

In support of their requests for a reduced operations risk capital charge, some Banks also cited a study done by one of their consultants that estimated an operations risk capital charge at about ten percent of credit and market risk (Study). The Study relied on loss estimates from a small number of publicly acknowledged operations risk failures and made some broad assumptions about the Banks' operations. The Finance Board has reviewed the Study, which is a useful initial attempt to measure the Banks' operations risk. However, while recognizing the time constraints under which the Study was completed and the inherent difficulties of measuring operations risk, the Finance Board finds that the Study is not comprehensive, or more specifically, that the data used is incomplete and many of the assumptions made were not adequately supported by empirical evidence. Thus, the Finance Board does not believe that the results of the Study provide a sufficient basis for changing the proposed rule.

Along similar lines, some commenters argued that the proposed capital charge was too onerous given the Banks' historical lack of losses from operational problems. However, without having to address the accuracy of such views, it is clear that the Banks recently have received additional investment authority and are entering into new business areas. *See, e.g.*, 65 FR 43969 (July 17, 2000) (adopting rules governing acquired member asset program), 65 FR 44414 (July 18, 2000) (adopting rules expanding eligible collateral to support advances and procedures for approval of new business activities). While these new activities may not present new or unique credit or market risks, they are likely to result in changes in existing business and hedging operations and in the development of new or more complex operational processes. The Finance Board believes that the likelihood of such changes further supports the conservative approach embodied in the operations risk capital charge as adopted. Moreover, as with all aspects of the capital regulation, the Finance Board is willing to consider changes to the operations risk capital requirements if it is presented with sufficient evidence to justify such amendments.

Section 932.7—Reporting Requirements

Section 932.7 of the proposed rule would have required each Bank to report to the Finance Board by the 15th day of each month its risk-based capital requirement by component amounts, and its actual total capital amount and permanent capital amount. These reported values would have been calculated as of the last day of the preceding month. In the proposed rule, the Finance Board also reserved the right to require the Banks to report this information more frequently. Comments received on the reporting requirement indicated that commenters found reporting capital requirements by the 15th day of each month to be unrealistic. Most commenters suggested that a reporting date later in the month would be more practical. Several commenters recommended eliminating the requirement, but said that if the Finance Board retained the requirement, it should be moved to the final calendar day of the month. One commenter recommended moving the reporting requirement to the 20th of the month.

The Finance Board believes that it is important to monitor the capital requirements of the Banks to ensure that they remain in compliance with the requirements and to identify any potential situations that may require remedial action, but recognizes that sufficient time must be provided if the reported information is to be accurate. As a result, the Finance Board has retained the reporting requirement in the final rule, but has changed the reporting date from the 15th day of the month to the 15th business day of the month providing more time for the Banks to prepare their capital calculations. Currently, the Banks report duration of equity and market value of equity calculations for the previous month to the Finance Board on the 15th business day of each month. The change in the reporting date in the final rule to the 15th business day would add approximately five days providing more time for the Banks to prepare their calculations and would be in conformance with current reporting requirements for the Banks for market risk measures. Except for the change in the reporting date, the Finance Board is adopting § 932.7 as proposed.

Section 932.8—Minimum liquidity requirements

As proposed, § 932.8 would require each Bank to hold contingency liquidity [28] in an amount sufficient to

[28] Contingency liquidity, as defined in the Finance Board regulations, means the sources of cash a Bank may use to meet its operational requirements when its access to the capital markets is impeded, and includes: (1) marketable assets with a maturity of one year or less; (2) self-liquidating assets with a maturity of seven days or less; (3) assets that are generally accepted as collateral in the repurchase agreement market; and

enable it to cover its liquidity risk, assuming a period of not less than five business days of inability to borrow in the capital markets. This requirement is in addition to meeting the deposit liquidity requirements contained in § 965.3 of the Finance Board's regulations. 12 CFR 965.3. Proposed § 932.8 also specifically stated that an asset that has been pledged under a repurchase agreement cannot be used to satisfy the contingency liquidity requirement. As discussed below, the Finance Board received several comments on proposed § 932.8, but did not alter the proposed provision in response. The Finance Board is, therefore, adopting § 932.8 as proposed.

Generally, commenters indicated that because there are already regulations that require each Bank to develop a liquidity policy, additional liquidity requirements are not necessary. One commenter indicated that if the Finance Board determines to have additional liquidity requirements, such a regulation should be postponed until after the capital regulation is finalized. Another commenter stated that if the liquidity regulation is adopted, then the Finance Board should provide guidance on how to measure compliance with the regulation. In this regard, the Finance Board believes that the analytical framework on liquidity measurement and management specified in the 1992 Basle paper serves as a useful guide in the measurement of contingency liquidity. *See* ''A Framework for Measuring and Managing Liquidity,'' Basle Committee on Banking Supervision (September 1992).

Another commenter believed that the proposed § 932.8 requirement would not be sufficient to avoid the risk that a Bank's operations would be disrupted during a significant financial crisis and recommended that to adhere to the Basle Accord Capital Standards, the Bank should hold sufficient capital against liquidity risk to withstand a period of one-to-three months' inability to access debt markets. The contingency liquidity requirement set forth in § 932.8 is not intended to fully resolve a situation where the Bank System's access to the capital markets is effectively limited for a period of time extended more than a few days. *See* 65 FR at 43430–31. Furthermore, neither the Basle Committee nor the banking regulators in the U.S. have indicated any desire to propose risk-based capital standards for liquidity risk. Therefore, the Finance Board has decided not to require a specific liquidity risk capital for the Banks, as suggested by the commenter.

The Banks currently operate under two general liquidity requirements, both of which are easily met by the Banks. Under § 965.3 of the Finance Board rules, which implements 12 U.S.C. 1431(g), the Banks must maintain investments in obligations of the United States, deposits in banks or trusts, or advances to members that mature in 5 years or less in an amount equal to the total deposits received from its members. In addition, the Banks must meet a liquidity requirement set forth in the FMP that requires each Bank to maintain a daily average liquidity level each month in an amount not less than 20 percent of the sum of the Bank's daily average demand and overnight deposits and other overnight borrowings during the month, plus 10 percent of the sum of the Bank's daily average term deposits, COs, and other borrowings that mature within one year. *See* FMP section III.C. In addition to these specific requirements, each Bank also must set standards in its risk management policy for day-to-day operational liquidity [29] and contingency liquidity needs that enumerate the specific types of investments to be held for such liquidity needs and establish the methodology to be used for determining the Bank's operational and contingency liquidity needs. 12 CFR 917.3(b)(3)(iii).

Neither of the existing liquidity requirements is structured to meet the Bank's liquidity needs should their access to the capital markets be limited in the short term for any reason. The requirement adopted in § 932.8 is meant to address principally events that may temporarily disrupt a Bank's access to credit markets. It may be viewed as conservative when examined in the context of events which could impair the normal operations of the Office of Finance (OF). The likelihood that there would be no access to the capital markets for as long as five business days is extremely remote, given OF's contingency plans to be back in operation within the same business day following a disaster. The OF contingency plans include back-up power sources and two back-up facilities, plus procedures to back-up their databases at both their main location as well as the primary alternative site. A back-up data tape from OF's main location is sent and stored off-site on a daily basis.

Rating agencies also consider adequate liquidity an important component in a financial institution's rating. Liquid investments held by the Banks are stated by Moody's as one of the reasons behind the triple-A rating for the Banks.[30] Thus, the Finance Board believes that the contingency liquidity requirement set forth in § 932.8 is important to maintaining a sound credit rating for the Banks and assuring continued safe and sound operation of the Bank System and access to the capital markets.

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board asked for comment on whether the rule should address the issue of operational liquidity, and if so, how it should do so. One commenter specifically addressed the question posed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. The commenter stated that each Bank should establish its own operational liquidity policy and that the Finance Board should not specify a specific requirement. After further consideration, the Finance Board believes that the requirements in § 917.3 and § 965.3 of the Finance Board's regulations sufficiently cover operational liquidity and will not address it further in its regulations at this time. 12 CFR 917.3, 965.3.

Section 932.9—Limits on Unsecured Extensions of Credit

Section 932.9 of the proposed rule established maximum capital exposure limits for unsecured extensions of credit by a Bank to a single counterparty or to affiliated counterparties and reporting requirements for total unsecured credit exposures and total secured and unsecured credit exposures to single counterparties and affiliated counterparties that exceed certain thresholds.

The proposed rule provided that unsecured credit exposure by a Bank to a single counterparty that would arise from authorized Bank investments or hedging transactions must not exceed the maximum capital exposure percent limit applicable to such counterparty, as set forth in Table 4 of the proposed rule, multiplied by the lesser of: (i) the Bank's total capital; or (ii) the counterparty's Tier 1 capital, or total capital if information on Tier 1 capital is not available. The maximum capital

(4) irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating category by a credit rating organization regarded as a NRSRO by the Securities and Exchange Commission. 12 CFR 917.1.

[29] Operational liquidity, as defined in the Finance Board's regulations, means sources of cash from both a Bank's ongoing access to the capital markets and its holdings of liquid assets to meet operational requirements in a Bank's normal course of business. 12 CFR 917.1.

[30] ''Moody's Investor Service, Global Credit Research, Moody's Credit Opinions—Financial Institutions'', (June 1999).

exposure percent limits applicable to specific counterparties in Table 4 ranged from a high of 15 percent, for counterparties with the highest investment grade rating, to a low of one percent for counterparties with a below investment grade rating.

The proposed rule also provided that where a counterparty has received different credit ratings for its transactions with short-term and long-term maturities: (i) the higher credit rating shall apply for purposes of determining the allowable maximum capital exposure limit under Table 4 applicable to the total amount of unsecured credit extended by the Bank to such counterparty; and (ii) the lower credit rating shall apply for purposes of determining the allowable maximum capital exposure limit under Table 4 applicable to the amount of unsecured credit extended by the Bank to such counterparty for the transactions with maturities governed by that rating. The proposed rule also provided that if a counterparty is placed on a credit watch for a potential downgrade by an NRSRO, the Bank would use the credit rating from that NRSRO at the next lower grade. The proposed rule also required that the total amount of unsecured extensions of credit by a Bank to all affiliated counterparties may not exceed: (i) the maximum capital exposure limit applicable under Table 4 based on the highest credit rating of the affiliated counterparties; (ii) multiplied by the lesser of: (A) the Bank's total capital; or (B) the combined Tier 1 capital, or total capital if information on Tier 1 capital is not available, of all of the affiliated counterparties.

The proposed rule required that the Banks report monthly to the Finance Board the amount of the Bank's total secured and unsecured credit exposures to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets.

The principal change made by the Finance Board in the final rule refined the calculation of the maximum allowable credit exposure to a counterparty. The proposed rule required that the determination be made on the basis of the counterparty's Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by the counterparty's principal regulator). The final rule adds another option in situations where Tier 1 capital and regulatory capital are not available and allows a Bank to use in these cases some comparable measure identified by the Bank. This was added in recognition that there may be unregulated counterparties that don't have regulatory capital (because they do not have a principal regulator) and allows a Bank to use some other comparable measurement such as equity, owners equity, or net worth.

Most of the commenters that addressed this section of the proposed rule opposed the implementation of unsecured credit limits. One commenter indicated that the limits are tolerable, but not necessary. Others commented that this section is not pertinent to the restructuring of Bank capital and therefore should be eliminated from the final rule, and one indicated a belief that limits on unsecured extensions of credit should be established by each Bank's board of directors, subject to review by the Finance Board during the examination process.

The Finance Board has long maintained limits on unsecured extensions of credit, which currently are contained in the FMP, and other financial institution regulatory agencies also limit the amount of credit that can be extended to one borrower. As explained in the proposed rule, concentrations of unsecured credit by a Bank with a limited number of counterparties or group of affiliated counterparties raise safety and soundness concerns because unsecured credit extensions are more likely to result in limited recoveries in the event of default that secured extensions of credit. Significant credit exposures to a few counterparties increase the probability that a Bank may experience a catastrophic loss in the even of default by one of the counterparties. In contrast, holding small credit exposures in a large number of counterparties reduces the probability of a catastrophic loss to a Bank.

Concentrations of credit by multiple Banks in a few counterparties also may raise safety and soundness concerns at the Bank System level. It is conceivable that some counterparties spread their exposure among several Banks, which may result in large aggregate credit exposures for the Bank System. Such exposures raise concerns regarding the liquidity of such debt in the event of adverse information regarding a counterparty.

Because the risk-based capital requirement does not take into account the increase in credit risk associated with concentrations of credit exposures, the Finance Board believes it is necessary, for safety and soundness reasons, to impose separate limits on unsecured credit exposures of a Bank to single counterparties and to affiliated counterparties. The Finance Board also believes that the limits established in this rule are appropriate in order to limit Bank System exposure to a counterparty or group of affiliated counterparties. The Finance Board is not imposing System-wide limits due to the operational difficulties in tracking and allocating exposure and thus feels that the limits applied to individual Banks must be low enough to limit System exposure. The Finance Board may solicit additional comments regarding the appropriateness of the limits in a future rulemaking and may consider revising them at that time.

G. Part 933—Bank Capital Structure Plans

Submission of Plans. Section 933.1(a) of the proposed rule would have required the board of directors of each Bank to submit to the Finance Board within 270 days after the date of publication of the final rule a capital plan that complies with part 931 and that, when in effect, would provide the Bank with sufficient total and permanent capital to meet the minimum regulatory capital requirements established by part 932. The proposed rule also would have allowed the Finance Board to approve a reasonable extension of the 270-day period upon a demonstration of good cause. As set forth in the GLB Act, the proposal would have required a Bank to receive Finance Board approval prior to implementing its capital plan or any subsequent amendment to the plan.

Proposed § 933.1(b) also stated that if a Bank, for any reason, were to fail to submit a capital plan to the Finance Board within the 270-day period, including any Finance Board approved extension, the Finance Board would be authorized to establish a capital plan for that Bank, and the Finance Board also would have the discretion to take any enforcement action against the Bank, its directors, or its executive officers authorized by section 2B(a) of the Bank Act, 12 U.S.C. 1422b(a), or to merge the Bank in accordance with section 26 of the Bank Act, 12 U.S.C. 1446, into another Bank that has submitted a capital plan.

The Finance Board is adopting § 933.1(a) and (b) without any material changes, though it has added a new § 933.1(c), which deals with Finance Board consideration of the capital plans. Section 933.1(c) provides that upon receipt of a capital plan from a Bank, the Finance Board may return the plan to the Bank if it does not comply with section 6 of the Bank Act or with any regulatory requirement, or if it is incomplete or materially deficient in any other respect. If the Finance Board accepts a plan for review, it still may require the Bank to submit additional information, as needed to review the

plan, or to amend the plan, as necessary to comply with the statute or regulations. The final rule also provides that the Finance Board may approve the capital plan conditionally, i.e., the approval is contingent upon the Bank complying with certain conditions stated in the approval resolution from the Finance Board. It is well established that an agency's authority to deny a regulatory submission includes the authority to approve an application subject to certain conditions, which the Finance Board will do as circumstances dictate. The final rule further provides that the Finance Board may require that the capital plans for all twelve Banks take effect on the same date. This issue was raised by several commenters, who contended that the joint-and-several liability of the Banks on their consolidated obligations may require that the individual Banks not operate under materially different capital structures, as such an arrangement could result in some Banks bearing a portion of the risks created by the other Banks. The Finance Board believes that the concern expressed by the commenters merits some consideration and has addressed the issue by reserving to itself the right to set a uniform effective date for the capital plans of all of the Banks. The Finance Board will decide whether to do so after reviewing the plans submitted by the Banks, and is not prepared to mandate in the final rule that all of the plans must take effect on the same date. Most of the comments on § 933.1 dealt with timeframes for review of capital plans, and the ''commonality'' of plans. Two Bank commenters suggested that the final rule impose a time limit for Finance Board review of the plans, while another Bank recommended a procedure and timeframe for addressing capital plan amendments. Other commenters suggested an expedited review process, or possibly pre-approval, for certain types of amendments to the capital plan during the initial implementation period and recommended that the rule require each Bank to include in its plan provisions to address simply and quickly any unintended consequences that may arise as the Banks implement their capital plans.

Many commenters suggested, to assure safety and soundness, coordination of the System as a whole and an appropriate degree of commonality among plans, that the Finance Board approve all of the Banks' capital plans at the same time or not approve any one plan until it has received plans from all of the Banks. Commonality was a common theme among commenters, who sought coordination of the final capital plans across the Bank System to avoid a potentially destabilizing competition and arbitrage of membership and to preserve the cooperative nature of the Bank System. The Finance Board intends to assess the issue of commonality as part of the approval process, and will consider, for example, differences between the plans on matters such as the minimum investment, including both membership and activity-based stock purchase requirements, dividend policy, and voting preferences. It is only by making such comparisons that the Finance Board will be able to assess accurately the possibility that the differences among the plans might encourage members of one Bank to relocate to another Bank in order to benefit from what they perceive to be a more advantageous Bank capital structure.

The Finance Board has not imposed any time limits for its review of the individual capital plans. Though the Congress spoke precisely to when the Finance Board must promulgate the final rule and when the Banks must submit their capital plans for review, it was silent on the issue of Finance Board review of the individual plans. Given that silence, and the possible variables that could affect the Finance Board's review of each plan, the Finance Board is not prepared to establish time periods in the final rule within which it must act on the capital plans. The length of time that it will take the Finance Board to review each capital plan will depend on a number of factors, including the quality of the initial submission, the timing of the submissions, and the approval of certain models to be used by the Banks on which capital plan approvals are contingent. For all of those reasons, and with so many unknown factors, the Finance Board does not believe that it is in the best interest of the agency or the Banks to establish a time limit for Finance Board review of the plans. Nonetheless, the Finance Board is committed to reviewing each plan in as expeditious a manner as is possible and encourages the Banks to communicate with the Finance Board as issues arise during the development of their capital plans. The Finance Board believes such communication during the development of the plans can aid immeasurably in eliminating potential problems that might otherwise delay the Finance Board's consideration of the capital plans. That approach will ensure that the Finance Board has the opportunity to fully and completely review each Bank's capital plan and to deal with unforeseen issues that may arise during the review period without imperiling the quality of its review.

Contents of Plans. Section 933.2 of the proposed rule would have implemented the GLB Act provisions regarding the contents of capital plans by requiring each Bank's capital plan to address, at a minimum, the classes of capital stock, capital stock issuance, membership investment or fee structure, transfer of capital stock, termination of membership, independent review of the capital plan, and implementation of the plan. The Finance Board received relatively few comments on this provision. Among those parties commenting, one Bank contended that the GLB Act requirement that members promptly comply with any amendments to the minimum investment would constitute an ''unlimited capital call'' on the assets of the members should the financial condition of the Bank deteriorate. Other commenters recommended that the final rule require each Bank to submit the capital plans to its members for their approval prior to submitting the plan to the Finance Board, and that the plans themselves be subject to public comment. Most of the revisions made in the final rule have been added in order to conform § 933.2 to the revisions that have been made to part 931 of the final rule. The most significant change to § 933.2 is the inclusion of § 933.2(a), which relates to the minimum investment that each Bank must establish for its members. Generally speaking, those changes reflect the amendments made to § 931.3 of the final rule, which added the minimum investment provisions to part 931 and which have been described previously. The final rule provides that each Bank's capital plan must require each member to purchase and maintain a minimum investment in the capital stock of the Bank in accordance with § 931.3, and must prescribe the manner in which the minimum investment is to be calculated. The capital plan must require each member to maintain its minimum investment in the Bank's stock for as long as it remains a member and, with regard to Bank stock purchased to support an advance or other business activity, for as long as the advance or business activity remains outstanding.

The final rule also requires the capital plan to specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a member of the Bank, as well as the amount and class (or classes) that a member must own in order to obtain advances from, or to engage in

other business transactions with, the Bank. If a Bank issues both Class A and Class B stock and the board of directors of that Bank authorizes the members to satisfy their minimum investment through the purchase of some combination of Class A and Class B stock, the capital plan must specify what combinations of stock are authorized. If the Bank were to authorize only one combination of Class A and Class B stock for the members to purchase, the members would be limited to whatever combination had been approved by the Bank's board of directors. Consistent with part 931, as well as with the GLB Act, § 933.2(a)(3) of the final rule provides the Banks with several alternatives for structuring their minimum investment. Thus, a capital plan may establish a minimum investment that is calculated as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of the other business activities conducted with the member, on any other basis approved by the Finance Board, or on any combination of the above. This affords each Bank the latitude to tailor its minimum investment to the needs of its members, and recognizes that each Bank may have a different operating philosophy and may wish, for example, to establish relatively lower activity-based stock purchase requirements and relatively higher membership stock purchase requirements, or vice versa. However a Bank decides to structure its minimum investment, the final rule requires that the minimum investment be set at such a level as to provide sufficient capital for the Bank to comply with its minimum capital requirements, as specified in part 932. The final rule also requires the plan to require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that the stock that the members are required to purchase remains sufficient to allow the Bank to comply with its minimum capital requirements. The final rule further provides that the plan shall require each member to comply with any such adjusted minimum investment, but may permit a member a reasonable period of time within which to come into compliance with the adjusted minimum investment. The final rule expressly provides that a Bank may permit a member to comply with an adjusted minimum investment by reducing its outstanding business with the Bank to a level that would be fully supported by its existing investment in the stock of the Bank.

A number of commenters criticized the provision in the proposed rule that would have required members to ''comply promptly'' with any adjustment to the minimum investment required under the capital plan for a Bank. The principal objection was that the provision is tantamount to an ''unlimited call'' by the Bank on the assets of the members to support the capital of the Bank, which could discourage institutions from remaining members after the capital plans take effect. As an initial matter, the requirements that each capital plan ''impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels'' and to ''require each member to comply promptly with any adjustments to the required minimum investment'' are statutory requirements and the Finance Board cannot delete them from the final rule. 12 U.S.C. 1426(c)(1)(D).

Historically, the amount of Bank stock that each member must own was set by statute as the greater of 1 percent of the member's mortgage assets or 5 percent of the advances outstanding to the member. In the GLB Act, the Congress repealed the statutory stock purchase requirements and replaced them with provisions directing each Bank to establish a ''minimum investment'' for its members. Aside from giving the Banks different options for how the minimum investment could be structured, Congress largely left the details of the minimum investment to the Banks. That delegation to the Banks was subject, however, to a statutory requirement that whatever method a Bank chose for its minimum investment must provide sufficient permanent and total capital for the Bank to meet the risk-based and leverage capital requirements established by the GLB Act. As a trade-off for allowing the Banks to establish the details of the minimum investment, the Congress imposed two new requirements. One requirement imposed on the board of directors of each Bank a ''continuing obligation'' to review and, as necessary, to adjust the minimum investment required of each member to ensure that the Bank remains in compliance with the GLB Act capital requirements. The other requirement imposed on the members an obligation to ''comply promptly'' with any revisions to the minimum investment established by that Bank.

As the Finance Board understands the criticisms of this aspect of the law, the requirement to ''comply promptly'' with the revised minimum investment is viewed by some as creating an open-ended obligation on the part of the members to guarantee the capital adequacy of the Banks. To those parties, this obligation would effectively require the members to pay to the Banks, for the purchase of additional Bank stock, whatever amounts might be demanded by the Banks. The Finance Board does not share the view of those commenters that this provision constitutes an ''unlimited call'' on the assets of the members of each Bank. Although the GLB Act does require the members of a Bank to comply promptly with any increased minimum investment requirement, it does not provide any means for a Bank to compel payment from any members that decline to purchase the additional amounts of Bank stock. Indeed, it is not clear that either the Banks or the Finance Board has any legal authority to compel a member to pay to its Bank any amounts that the member does not want to pay. In the absence of any ability of either the Bank or the Finance Board to compel payment, the Finance Board does not believe that this provision can reasonably be construed to impose an unlimited call on the assets of any member.

That is not to say that a member's refusal to comply promptly with the stock purchase requirement of the Bank's capital plan would be without consequences for the member. For instance, a member that refused to comply with an amended minimum investment requirement would be in violation of section 6(c)(1)(D) of the Bank Act, as well as with the provisions of the capital regulations. If a member violates those provisions, it will provide the Bank with grounds to terminate its membership involuntarily, in accordance with section 6(d)(2) of the Bank Act, as amended by the GLB Act. 12 U.S.C. 1426(c)(1)(D), (d)(2). Moreover, depending on the terms of the advances agreements or other agreements between the Bank and its member, a refusal to comply with the minimum investment may constitute an event of default under such agreements that would allow the Bank to take certain other actions, such as calling due all outstanding advances to that member, liquidating its collateral, or suspending dividend payments to that member, or may give the Bank grounds for a civil action against the member. How the Banks and members resolve these issues will depend in large part on the particular circumstances of each case. As a fundamental matter, however,

the Banks are cooperatives and as such must look solely to their members as the source of the capital needed to support the business conducted by the Banks with their members. As members of a cooperative, the members of a Bank have an obligation to provide the Bank with the capital that the Banks are required to hold in order to support the risks attendant to the business that they conduct with their members. Under the GLB Act, membership is voluntary for all institutions, as are the transactions that a member initiates with its Bank. If an institution wishes to remain a member of a Bank, or if it wishes to obtain (or retain) advances from its Bank, it simply cannot refuse to provide the Bank with the capital that the GLB Act requires the Bank to have for such transactions. That does not mean that the Bank has an unlimited call on the assets of the member. It does mean that the Banks will be required to manage actively the important relationships they maintain with their members, and that members may be required, from time to time, to reevaluate the economics of remaining a member of the Bank. If the costs of continued membership exceed the benefits that the member expects to receive from being a member, then the member can withdraw voluntarily from membership or can allow the Bank to terminate its membership for noncompliance with the Bank Act. In either event, the decision of the member will be a voluntary decision based on the economics of the situation, which is precisely the type of decision that the members make every day in the conduct of their business.

The Finance Board recognizes that ''comply promptly'' does not necessarily mean that a member must comply with an adjusted minimum investment immediately, and has included in the final rule a provision that allows a Bank to establish a reasonable period of time for the members to comply with the new minimum investment. As a practical matter, this is most apt to be an issue only with regard to advances or other transactions that are already on the books of the Bank at the time that the minimum investment is adjusted. With respect to advances and other transactions initiated subsequent to the revised minimum investment provisions, the Finance Board expects that the members will purchase the required amount of Bank stock prior to closing the new transaction. With respect to outstanding transactions, the Bank will determine what constitutes a reasonable period of time, and may take into consideration the fact that advances or other transactions may mature or otherwise terminate in the short term. The Finance Board notes, however, that it would not be a safe or sound practice for the Bank to carry undercapitalized assets on its books for more than a relatively brief period, nor would it be equitable to other members that promptly purchase the additional stock to allow disparate stock purchase requirements to remain outstanding for a significant period.

It also should be noted that a Bank cannot unilaterally increase the minimum investment that it requires of its members. By law, the minimum investment must be specified in the capital plan, which must be approved by the Finance Board. Thus, in order for a Bank to increase its minimum investment, the board of directors of the Bank would have to authorize the amendment to the capital plan and its submission to the Finance Board. Moreover, it is by no means certain that the Bank will ask to apply the increased minimum investment to all of its outstanding business with its members. Depending on the circumstances, it is possible that a Bank could ask that the minimum investment be approved only for new business and that it could ask for a transition period for the members to adjust their stock holdings for their existing business with the Banks. Regardless of the content of the submission, the Finance Board would review the amendment in the same manner as it reviews the initial capital plan and, presumably, would approve the plan. It will only be after the Finance Board has approved the amendment that the Bank could impose the revised minimum investment on its members.

As required by the GLB Act, § 933.2(b) of the final rule also requires that the capital plan specify the class or classes of stock (including subclasses, if any) that the Bank will issue, and establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. The final rule allows a Bank to establish preferences that are related to, but not limited to, the dividend, voting, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to § 915.5 shall expressly identify the voting rights that are conferred on each class of stock with regard to the election of Bank directors. As specified in the GLB Act, the final rule also requires that the capital plan provide that the owners of the Class B stock own the retained earnings, and paid-in surplus of the Bank, but shall have no right to withdraw or otherwise receive distribution of any portion of such retained earnings or paid-in surplus of the Bank except through the declaration of a dividend or a capital distribution approved by the board of directors of the Bank, or through the liquidation of the Bank.

Section 933.2(c) of the final rule requires the capital plan to establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any capital requirement or if, after paying the dividend, it would not be in compliance with any capital requirement.

Section 933.2(d) of the final rule requires the capital plan to address issues relating to initial issuance of the Class A and/or Class B capital stock, to specify the date on which the Bank will implement the new capital structure, to establish the manner in which the Bank will issue stock to its existing members, as well as to eligible institutions that subsequently become members, and to address how the Bank will retire the stock that is outstanding as of the effective date, including stock held by a member that does not affirmatively elect to convert or exchange its existing stock to either Class A or Class B stock, or some combination thereof.

Section 933.2(e) of the final rule requires the capital plan to set forth the criteria for stock transactions, including the issuance, redemption, repurchase, transfer, and retirement of all Bank stock. The capital plan also must provide that the Bank may not issue stock other than in accordance with § 931.2; that the stock of the Bank may be issued only to and held only by the members of that Bank; and that the stock of the Bank may be transferred only in accordance with § 931.6, and may be traded only between the Bank and its members. The capital plan may provide for a minimum investment for members that purchase Class B stock that is lower than the minimum investment for members that purchase Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements. The capital plan must specify the fee, if any, to be imposed on a member that cancels a request to redeem Bank stock, and must specify the period of notice that the Bank will provide to a member before the Bank, on its own initiative, determines to repurchase any excess Bank stock from a member.

As required by the GLB Act, § 933.2(f) of the final rule requires the capital plan to address the manner in which the Bank will provide for the disposition of

its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from the prepayment of advances prior to their stated maturity.

Under § 933.2(g) of the final rule, each Bank's capital plan must demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and its regulatory risk-based requirement after the plan is implemented. As required by the GLB Act, the final rule requires each Bank to conduct a review of its plan by an independent certified public accountant prior to submission to the Finance Board, to ensure, to the extent possible, that implementation of the plan would not result in the write-down of the redeemable stock owned by its members, and must conduct a separate review by at least one NRSRO to determine, to the extent possible, whether the implementation of the plan would have a material effect on the credit rating of the Bank. The final rule requires each Bank to submit a copy of each report to the Finance Board at the time it submits its proposed capital plan.

Though some commenters recommended that the final rule require the Banks to submit their capital plans to their members for approval prior to submitting the plans to the Finance Board, the Finance Board has not included such a requirement in the final rule. Nothing in the GLB Act requires member approval of capital plans, nor indicates how such a vote would be conducted. The Finance Board notes that the interests of the members are represented by the elected directors of each Bank, each of whom is an officer or a director of a member and who collectively constitute a majority of the board of each Bank. Moreover, the GLB Act expressly charges the board of directors of each Bank with the responsibility for developing a capital plan that, among other things, ''is best suited for the condition and operation of the bank and the interest of the members of the bank.'' The Finance Board further notes, however, that there is nothing in the GLB Act that would prohibit a Bank from soliciting the views of its members in creating the capital plan or from seeking the approval of the members prior to submitting the capital plan to the Finance Board. Regardless of how a Bank addresses the issue of member involvement, the Finance Board expects that each Bank will submit its capital plan to the Finance Board on or before the statutory deadline.

H. Parts 956, 960 and 966

The final rule amends § 966.8 by adding new paragraph (d) which sets forth requirements for the issuance of consolidated obligations denominated in foreign currencies or linked to equity or commodity prices. This provision was proposed in the capital regulation as part of § 932.5(b)(5). Because § 932.5 generally addresses requirements governing the Banks' internal market risk capital models, the Finance Board has determined that it would be more appropriate for these requirements relating to the issuance of consolidated obligations to appear in part 966 of the Finance Board's regulations, which concerns the issuance of consolidated obligations. As such, the requirements governing the issuance of consolidated obligations denominated in foreign currencies or linked to equity or commodity prices that were proposed in § 932.5(b) are being adopted in the final rule without substantive change as a new paragraph (d) to § 966.8.

Conforming changes to § 956.3(b), which reference the requirements of new § 966.8(d), have also been adopted. These conforming changes to § 956.3(b) were not part of the proposed regulation but do not alter the substance of recently adopted § 956.3. 65 FR 43969, 43986 (July 17, 2000). Instead, they merely provide a cross reference to the requirements in part 966. The Finance Board also proposed to add new part 960 of its regulations in the proposed capital regulation. The new part would have authorized the Banks to engage in specific off-balance sheet transactions, including derivative contracts, and set forth requirements that the Banks must document non-speculative use of any derivative instruments that do not qualify as hedging instruments under GAAP. These changes would have adopted authority that already existed in the FMP.

As already discussed, recent changes in accounting standards for derivatives means that derivatives can no longer be considered purely off-balance sheet items. Further, some of the other transactions that would have been authorized under proposed part 960 could also be on-balance sheet under certain circumstances. The Finance Board did not wish to imply that if accounting treatment required one of the transactions listed in proposed part 960 to be on the Bank's balance sheet that the transaction would not be authorized. Thus, in the final rule the Finance Board has combined proposed part 960 with part 956, which sets forth the authority for the Banks to make specific investments. The items that would have been authorized as off-balance sheet transactions in proposed part 960 are now authorized under new § 956.5. The Finance Board also made a conforming change to the list of transactions authorized under § 956.5 of the final rule to recognize that under the AMA programs, Banks may enter into commitments to purchase loans that may be recorded as off-balance sheet items.

In addition, one comment was received on proposed part 960. It requested the Finance Board to add standby bond purchase agreements to the list of authorized off-balance sheet transactions. Given the brevity of the comment, Finance Board staff has sought additional information and clarification from the commenters on this request and is still studying the issues involved. Thus, the Finance Board has determined not to address this issue at this time but may do so at some future date.

The Finance Board did not receive any specific comments on the amendments to part 956 that were proposed as part of the capital regulation. These proposed amendments were adopted with the changes discussed above.

III. Paperwork Reduction Act

As part of the notice of proposed rulemaking, the Finance Board published a request for comments concerning the collection of information contained in §§ 931.7 through 931.9 and 933.2(c)(2) of the proposed rule. The Finance Board submitted the proposed collection of information, and accompanying analysis, to the Office of Management and Budget (OMB) for review in accordance with section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3507(d). The Finance Board received no comments on the proposed information collection.

OMB has approved the proposed information collection without conditions and assigned control number 3069–0059 with an expiration date of November 30, 2003. Likely respondents and/or record keepers will be Banks and Bank members. The Banks will use the information collection to implement their new capital structures, determine requirements for member ownership of Bank stock, and determine whether Bank members satisfy the statutory and regulatory capital stock requirements. *See* 12 U.S.C. 1426. Responses are mandatory and are required to obtain or retain a benefit. *See* 12 U.S.C. 1426. As a result of reorganization and revision of

certain proposed provisions in the final rule, the information collections are now located in §§ 931.3 and 933.2(e)(4) of the final rule. Proposed § 931.9, which required a Bank and member to agree on a plan to divest Bank stock to meet certain concentration limits, is not included in the final rule and, therefore, there is no information collection required in this connection.

The final capital rule does not substantively or materially modify the approved information collection. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See* 44 U.S.C. 3512(a).

The following is the estimated annual reporting and recordkeeping hour burden as approved by OMB:

a. Number of respondents: 7,512
b. Total annual responses: 52,500
Percentage of these responses collected electronically: 0%
c. Total annual hours requested: 900,648

The following is the estimated annual reporting and recordkeeping cost burden as approved by OMB:

a. Total annualized capital/startup costs: 0
b. Total annual costs (O&M): 0
c. Total annualized cost requested: $46,717,758.48

Comments regarding the collection of information may be submitted in writing to the Finance Board at 1777 F Street, N.W., Washington, D.C. 20006, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503.

IV. Regulatory Flexibility Act

The final rule would apply only to the Finance Board and to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the final rule will not have a significant impact on a substantial number of small entities.

List of Subjects

12 CFR Part 915

Banks, banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 917

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Parts 930, 931, 932 and 933

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

12 CFR Part 956

Community development, Credit, Federal home loan banks, Housing, Investments, Reporting and recordkeeping requirements.

12 CFR Part 966

Federal home loan banks, Securities.

Accordingly, the Federal Housing Finance Board amends title 12, chapter IX of the Code of Federal Regulations, as follows:

PART 915—BANK DIRECTOR ELIGIBILITY, APPOINTMENT AND ELECTIONS

1. The authority citation for part 915 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

2. Amend § 915.3 by revising the introductory text of paragraph (b) and paragraph (b)(3) to read as follows:

§ 915.3 Director elections.

* * * * *

(b) *Designation of elective directorships.* The Finance Board annually shall designate each elective directorship as representing the members that are located in a particular state. The Finance Board shall conduct the annual designation of directorships for each Bank based on the number of shares of Bank stock required to be held by the members in each state as of December 31 of the preceding calendar year. If a Bank has issued more than one class of stock, the Finance Board shall designate the directorships for that Bank based on the combined number of shares required to be held by the members in each state. For purposes of conducting the designation, if a Bank's capital plan was not in effect on the immediately preceding December 31st, the number of shares of Bank stock that the members were required to hold as of that date shall be determined in accordance with § 925.20 and § 925.22. If a Bank's capital plan was in effect on the immediately preceding December 31st, the number of shares of Bank stock that the members were required to hold as of that date shall be determined in accordance with the minimum investment established by the capital plan for that Bank, provided, however, that for any members whose Bank stock is less than the minimum investment during a transition period, the amount of stock to be used in the designation of directorships shall be the number of shares of Bank stock actually owned by those members as of December 31st. In all cases, the Finance Board shall designate the directorships by using the information provided by the Banks in the capital stock report required by § 915.4. The Finance Board shall allocate the elective directorships among the states as follows:

* * * * *

(3) If the number of elective directorships allocated to any State pursuant to paragraphs (b)(1) and (b)(2) of this section is less than the number allocated to that State on December 31, 1960, as specified in § 915.15, the Finance Board shall allocate such additional elective directorships to that State until the total allocated equals the number allocated to that State on December 31, 1960;

* * * * *

3. Revise § 915.4 to read as follows:

§ 915.4 Capital stock report.

(a) On or before April 10 of each year, each Bank shall submit to the Finance Board a capital stock report that indicates, as of the record date, the number of members located in each voting state in the Bank's district, the number of shares of Bank stock that each member (identified by its docket number) was required to hold, and the number of shares of Bank stock that all members located in each voting state were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by the members. The Bank shall certify to the Finance Board that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holdings pursuant to § 925.22(b)(1) of this chapter.

(b) If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that the members are required to hold as of the record date shall be determined in accordance with § 925.20 and § 925.22. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that the members were required to hold as of that date shall be determined in accordance with the minimum investment established by the

capital plan for that Bank, provided, however, that for any members whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be reported shall be the number of shares of Bank stock actually owned by those members as of the record date.

4. Revise § 915.5 to read as follows:

§ 915.5 Determination of member votes.

(a) *In general.* Each Bank shall determine, in accordance with this section, the number of votes that each member of the Bank may cast for each directorship that is to be filled by the vote of the members that are located in a particular state.

(b) *Number of votes.* For each directorship that is to be filled in an election, each member that is located in the state to be represented by the directorship shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock that were required to be held by all members located in that state as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with § 925.20 and § 925.22. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the Bank's capital plan, provided, however, that for any members whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be used shall be the number of shares of Bank stock actually owned by those members as of the record date.

(c) *Voting preferences.* If the board of directors of a Bank includes any voting preferences as part of its approved capital plan, those preferences shall supercede the provisions of paragraph (b) of this section that otherwise would allow a member to cast one vote for each share of Bank stock it was required to hold as of the record date. If a Bank establishes a voting preference for a class of stock, the members with voting rights shall remain subject to the provisions of Section 7(b) of the Act that prohibit any member from casting any vote in excess of the average number of shares of stock required to be held by all members in its state.

5. Amend § 915.6 by revising paragraph (a)(3) to read as follows:

§ 915.6 Elective director nominations.

(a) * * *

(3) An attachment indicating the name, location, and docket number of every member in the member's voting state, and the number of votes each such member may cast for each directorship to be filled in the election, as determined in accordance with § 915.5.

* * * * *

6. Amend § 915.7 by adding a new sentence at the end of paragraph (b)(2) to read as follows:

§ 915.7 Eligibility requirements for elective directors.

* * * * *

(b) * * *

(2) * * * For purposes of this paragraph, the term appropriate federal regulator has the same meaning as the term ''appropriate Federal banking agency'' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and, for federally insured credit unions, shall mean the National Credit Union Administration, and the term appropriate State regulator means any State officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member.

* * * * *

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

7. The authority citation for part 917 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1427, 1432(a), 1436(a), 1440.

8. Amend § 917.3(b)(1) to read as follows:

§ 917.3 Risk management.

* * * * *

(b) * * *

(1) After the Finance Board has approved a Bank's capital plan, but before the plan takes effect, the Bank shall amend its risk management policy to describe the specific steps the Bank will take to comply with its capital plan and to include specific target ratios of total capital and permanent capital to total assets at which the Bank intends to operate. The target operating capital-to-assets ratios to be specified in the risk management policy shall be in excess of the minimum leverage and risk-based capital ratios and may be expressed as a range of ratios or as a single ratio;

* * * * *

9. Amend § 917.9 by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 917.9 Dividends.

* * * * *

(b) The requirement in paragraph (a) of this section that dividends shall be computed without preference shall cease to apply to any Bank that has established any dividend preferences for one or more classes or subclasses of its capital stock as part of its approved capital plan, as of the date on which the capital plan takes effect.

PART 925—MEMBERS OF THE BANKS

10. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

11. Revise § 925.24 to read as follows:

§ 925.24 Consolidations involving members.

(a) *Consolidation of members.* Upon the consolidation of two or more institutions that are members of the same Bank into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate on the cancellation of its charter. Upon the consolidation of two or more institutions, at least two of which are members of different Banks, into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate upon cancellation of its charter, provided, however, that if more than 80 percent of the assets of the consolidated institution are derived from the assets of a disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which that disappearing institution was a member prior to the consolidation, and the membership of the other institutions shall terminate upon the effective date of the consolidation.

(b) *Consolidation into nonmember*—(1) *In general.* Upon the consolidation of a member into an institution that is not a member of a Bank, where the

consolidated institution operates under the charter of the nonmember institution, the membership of the disappearing institution shall terminate upon the cancellation of its charter.

(2) *Notification.* If a member has consolidated into a nonmember that has its principal place of business in a state in the same Bank district as the former member, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the former member within which to notify the Bank of the former member that the consolidated institution intends to apply for membership in such Bank. If the consolidated institution does not so notify the Bank by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 925.29.

(3) *Application.* If such a consolidated institution has notified the appropriate Bank of its intent to apply for membership, the consolidated institution shall submit an application for membership within 60 calendar days of so notifying the Bank. If the consolidated institution does not submit an application for membership by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 925.29.

(4) *Outstanding indebtedness.* If a member has consolidated into a nonmember institution, the Bank need not require the former member or its successor to liquidate any outstanding indebtedness owed to the Bank or to redeem its Bank stock, as otherwise may be required under § 925.29, during:

(i) The initial 60 calendar-day notification period;

(ii) The 60 calendar-day period following receipt of a notification that the consolidated institution intends to apply for membership; and

(iii) The period of time during which the Bank processes the application for membership.

(5) *Approval of membership.* If the application of such a consolidated institution is approved, the consolidated institution shall become a member of that Bank upon the purchase of the amount of Bank stock required by section 6 of the Act. If a Bank's capital plan has not taken effect, the amount of stock that the consolidated institution is required to own shall be as provided in § 925.20 and § 925.22. If the capital plan for the Bank has taken effect, the amount of stock that the consolidated institution is required to own shall be equal to the minimum investment established by the capital plan for that Bank.

(6) *Disapproval of membership.* If the Bank disapproves the application for membership of the consolidated institution, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 925.29.

(c) *Dividends on acquired Bank stock.* A consolidated institution shall be entitled to receive dividends on the Bank stock that it acquires as a result of a consolidation with a member in accordance with § 931.4(a) of this Chapter.

(d) *Stock transfers.* With regard to any transfer of Bank stock from a disappearing member to the surviving or consolidated member, as appropriate, for which the approval of the Finance Board is required pursuant to section 6(f) of the Act, 12 U.S.C. 1426(f), as in effect prior to November 12, 1999, such transfer shall be deemed to be approved by the Finance Board by compliance in all applicable respects with the requirements of this section.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0004 with an expiration date of April 30, 2001.)

§ 925.25 [Removed]

12. Remove § 925.25.

13. Revise § 925.26 to read as follows:

§ 925.26 Voluntary withdrawal from membership.

(a) *In general.* (1) Any institution may withdraw from membership by providing to the Bank written notice of its intent to withdraw from membership. A member that has so notified its Bank shall be entitled to have continued access to the benefits of membership until the effective date of its withdrawal, but the Bank need not commit to providing any further services, including advances, to a withdrawing member that would mature or otherwise terminate subsequent to the effective date of the withdrawal. A member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank. A Bank may impose a fee on a member that cancels a notice of withdrawal, provided that the fee or the manner of its calculation is specified in the Bank's capital plan.

(2) A Bank shall notify the Finance Board within 10 calendar days of receipt of any notice of withdrawal or notice of cancellation of withdrawal from membership.

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends, unless the institution has cancelled its notice of withdrawal prior to that date.

(c) *Stock redemption periods.* The receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock held by that member that is not already subject to a pending request for redemption. In the case of an institution the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods for any stock that is not subject to a pending notice of redemption shall be deemed to commence on the date on which the charter of the former member is cancelled.

(d) Certification. No institution may withdraw from membership unless, on the date that the membership is to terminate, there is in effect a certification from the Finance Board that the withdrawal of a member will not cause the Bank System to fail to satisfy its requirements under 12 U.S.C. 1441b(f)(2)(C) to contribute toward the interest payments owed on obligations issued by the Resolution Funding Corporation.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0004 with an expiration date of April 30, 2001.)

14. Revise § 925.27 to read as follows:

§ 925.27 Involuntary termination of membership.

(a) *Grounds.* The board of directors of a Bank may terminate the membership of any institution that:

(1) Fails to comply with any requirement of the Act, any regulation adopted by the Finance Board, or any requirement of the Bank's capital plan;

(2) Becomes insolvent or otherwise subject to the appointment of a

conservator, receiver, or other legal custodian under federal or state law; or

(3) Would jeopardize the safety or soundness of the Bank if it were to remain a member.

(b) *Stock redemption periods.* The applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock owned by a member and not already subject to a pending request for redemption, shall commence on the date that the Bank terminates the institution's membership.

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed by the Bank.

§ 925.28 [Removed]

15. Remove § 925.28.

16. Revise § 925.29 to read as follows:

§ 925.29 Disposition of claims.

(a) *In general.* If an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all outstanding indebtedness owed by that member to the Bank and for settling all other claims against the member. After all such obligations and claims have been extinguished or settled, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

(b) *Bank stock.* If an institution that has withdrawn from membership or that otherwise has had its membership terminated remains indebted to the Bank or has outstanding any business transactions with the Bank after the effective date of its termination of membership, the Bank shall not redeem or repurchase any Bank stock that is required to support the indebtedness or the business transactions until after all such indebtedness and business transactions have been extinguished or settled.

17. Revise § 925.30 to read as follows:

§ 925.30 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership or otherwise has had its membership terminated and which has divested all of its shares of Bank stock, may not be readmitted to membership in any Bank, or acquire any capital stock of any Bank, for a period of 5 years from the date on which its membership terminated and it divested all of its shares of Bank stock.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership or had its membership terminated. Any institution that withdrew from Bank membership prior to December 31, 1997, and for which the 5-year period has not expired, may apply for membership in a Bank at any time, subject to the approval of the Finance Board and the requirements of this part 925.

18. In subchapter E, add new parts 930, 931, 932, and 933 to read as follows:

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 930.1 Definitions.

As used in this subchapter:

Affiliated counterparty means a counterparty that is an affiliate of another counterparty, as the term ''affiliate'' is defined in 12 U.S.C. 371c(b).

Capital plan means the capital structure plan required for each Bank by Section 6(b) of the Act, 12 U.S.C. 1426(b), as approved by the Finance Board, unless the context of the regulation refers to the capital plan prior to its approval by the Finance Board.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 931.1(a) of this subchapter.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 931.1(b) of this subchapter.

Contingency liquidity has the meaning set forth in § 917.1 of this chapter.

Credit derivative contract means a derivative contract that transfers credit risk.

Credit risk has the meaning set forth in § 917.1 of this chapter.

Derivative contract means generally a financial contract the value of which is derived from the values of one or more underlying assets, reference rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals, commodity, and credit contracts, and any other instruments that pose similar risks.

Excess stock means that amount of capital stock of a Bank held by a member in excess of the minimum investment in Bank stock required by § 931.3 of this chapter.

Exchange rate contracts include cross-currency interest-rate swaps, forward foreign exchange rate contracts, currency options purchased, and any similar instruments that give rise to similar risks.

GAAP means accounting principles generally accepted in the United States.

General allowance for losses means an allowance established by a Bank in accordance with GAAP for losses, but which does not include any amounts held against specific assets of the Bank.

Government Sponsored Enterprise, or GSE, means a United States Government-sponsored agency or instrumentality originally established or chartered to serve public purposes specified by the United States Congress, but whose obligations are not obligations of the United States and are not guaranteed by the United States.

Interest rate contracts include, single currency interest-rate swaps, basis swaps, forward rate agreements, interest-rate options, and any similar instrument that gives rise to similar risks, including when-issued securities.

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

Market risk has the meaning set forth in § 917.1 of this chapter.

Marketable means, with respect to an asset, that the asset can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

Market value at risk is the loss in the market value of a Bank's portfolio measured from a base line case, where the loss is estimated in accordance with § 932.5 of this chapter.

Minimum investment means the minimum amount of Class A and/or Class B stock that a member is required to own in order to be a member of a Bank and in order to obtain advances and to engage in other business activities with the Bank in accordance with § 931.3 of this chapter.

Operations risk has the meaning set forth in § 917.1 of this chapter.

Permanent capital means the retained earnings of a Bank, determined in accordance with GAAP, plus the amount paid-in for the Bank's Class B stock.

Redeem or Redemption means the acquisition by a Bank of its outstanding

Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock.

Regulatory risk-based capital requirement means the amount of permanent capital that a Bank is required to maintain in accordance with § 932.3 of this chapter.

Regulatory total capital requirement means the amount of total capital that a Bank is required to maintain in accordance with § 932.2 of this chapter.

Repurchase means the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year statutory redemption period for the stock.

Repurchase agreement means an agreement between a seller and a buyer whereby the seller agrees to repurchase a security or similar securities at an agreed upon price, with or without a stated time for repurchase.

Total assets means the total assets of a Bank, as determined in accordance with GAAP.

Total capital of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank's capital plan that the Finance Board has determined to be available to absorb losses incurred by such Bank.

Walkaway clause means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the bilateral netting contract.

PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

Sec.

931.1 Classes of capital stock.
931.2 Issuance of capital stock.
931.3 Minimum investment in capital stock.
931.4 Dividends.
931.5 Liquidation, merger, or consolidation.
931.6 Transfer of capital stock.
931.7 Redemption and repurchase of capital stock.
931.8 Capital impairment.
931.9 Transition provision.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 931.1 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value; and

(3) Be redeemable in cash only on six-months written notice to the Bank.

(b) Class B stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value;

(3) Be redeemable in cash only on five-years written notice to the Bank; and

(4) Confer an ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the Bank; and

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences as may be authorized in the Bank's capital plan, provided, however, that each subclass of stock shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

§ 931.2 Issuance of capital stock.

(a) *In general.* A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by § 931.1, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members and only in book-entry form, and the Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank's capital plan.

(b) *Initial issuance.* In connection with the initial issuance of its Class A and/or Class B stock (or any subclass of either), a Bank may issue such stock in exchange for its existing stock, through a conversion of its existing stock, or through any other fair and equitable transaction or method of distribution. As part of its initial stock issuance transaction, a Bank may distribute any portion of its then-existing unrestricted retained earnings as shares of Class B stock.

§ 931.3 Minimum investment in capital stock.

(a) A Bank shall require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances and other services from the Bank. The amount of the required minimum investment shall be determined in accordance with the Bank's capital plan and shall be sufficient to ensure that the Bank remains in compliance with its minimum capital requirements. A Bank shall require each member to maintain its minimum investment for as long as the institution remains a member of the Bank and for as long as the member engages in any activity with the Bank against which the Bank is required to maintain capital.

(b) A Bank may establish the minimum investment required of each member as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of any other business activity conducted with the member, on any other basis that is approved by the Finance Board, or any combination thereof.

(c) A Bank may require each member to satisfy the minimum investment requirement through the purchase of either Class A or Class B stock, or through the purchase of one or more combinations of Class A and Class B stock that have been authorized by the board of directors of the Bank in its capital plan. A Bank, in its discretion, may establish a lower minimum investment for members that invest in Class B stock than is required for members that invest in Class A stock, provided that such reduced investment provides sufficient capital for the Bank to remain in compliance with its minimum capital requirements.

(d) Each member of a Bank shall at all times maintain an investment in the capital stock of the Bank in an amount that is sufficient to satisfy the minimum investment required for that member in accordance with the Bank's capital plan.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0059 with an expiration date of November 30, 2003.)

§ 931.4 Dividends.

(a) *In general.* A Bank may pay dividends on its capital stock only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. The capital plan may establish different dividend rates or preferences for each class or subclass of stock, which may include a dividend that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. A member, including a member that has provided the Bank with a notice of intent to withdraw from membership or one whose membership is otherwise terminated, shall be entitled to receive any dividends that a

Bank declares on its capital stock while the member owns the stock.

(b) *Limitation on payment of dividends.* In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its minimum capital requirements, nor shall a Bank that is not in compliance with any of its minimum capital requirements declare or pay any dividend on its capital stock.

§ 931.5 Liquidation, merger, or consolidation.

The respective rights of the Class A and Class B stockholders, in the event that the Bank is liquidated, or is merged or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank.

§ 931.6 Transfer of capital stock.

A member of a Bank may transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. Any such stock transfers shall be at par value and shall be effective upon being recorded on the appropriate books and records of the Bank.

§ 931.7 Redemption and repurchase of capital stock.

(a) *Redemption.* A member may have its capital stock in a Bank redeemed by providing written notice to the Bank in accordance with this section. For Class A stock, a member shall provide six-months written notice, and for Class B stock a member shall provide five-years written notice. The notice shall indicate the number of shares of Bank stock that are to be redeemed, and a member shall not have more than one notice of redemption outstanding at one time for the same shares of Bank stock. A member may cancel a notice of redemption by so informing the Bank in writing, and the Bank may impose a fee (to be specified in its capital plan) on any member that cancels a pending notice of redemption. At the expiration of the applicable notice period, the Bank shall pay the stated par value of that stock to the member in cash. A Bank shall not be obligated to redeem its capital stock other than in accordance with this paragraph.

(b) *Repurchase.* A Bank, in its discretion and without regard to the applicable redemption periods, may repurchase from a member any outstanding Class A or Class B capital stock that is in excess of the amount of that class of Bank stock that the member is required to hold as a minimum investment, in accordance with the capital plan of that Bank. A Bank undertaking such a stock repurchase at its own initiative shall provide the member with reasonable notice prior to repurchasing any excess stock, with the period of such notice to be specified in the Bank's capital plan, and shall pay the stated par value of that stock to the member in cash. For purposes of this section, any Bank stock owned by a member shall be considered to be excess stock if the member is not required to hold such stock either as a condition of remaining a member of the Bank or as a condition of obtaining advances or transacting other business with the Bank. A member's submission of a notice of intent to withdraw from membership, or its termination of membership in any other manner, shall not, in and of itself, cause any Bank stock to be deemed excess stock for purposes of this section.

(c) *Limitation.* In no event may a Bank redeem or repurchase any stock if, following the redemption or repurchase, the Bank would fail to meet any minimum capital requirement, or if the member would fail to maintain its minimum investment in the stock of the Bank, as required by § 931.3.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0004 with an expiration date of April 30, 2001.)

§ 931.8 Capital impairment.

A Bank may not redeem or repurchase any capital stock without the prior written approval of the Finance Board if the Finance Board or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. This prohibition shall apply even if a Bank is in compliance with its minimum capital requirements, and shall remain in effect for however long the Bank continues to incur such charges or until the Finance Board determines that such charges are not expected to continue.

§ 931.9 Transition provision.

(a) *In general.* Each Bank shall comply with the minimum leverage and risk-based capital requirements specified in § 932.2 and § 932.3 of this chapter, respectively, and each member shall comply with the minimum investment established in the capital plan, as of the effective date of that Bank's capital plan. The effective date of a Bank's capital plan shall be the date on which the Bank first issues any Class A or Class B stock. Prior to the effective date, the issuance and retention of Bank stock shall be as provided in § 925.20 and § 925.22 of this chapter.

(b) *Transition period.* (1) *Bank transition.* A Bank that will not be in compliance with the minimum leverage and risk-based capital requirements specified in § 932.2 and § 932.3 of this chapter as of the effective date of its capital plan shall maintain compliance with the leverage limit requirements in § 966.3(a) of this chapter and shall include in its capital plan a description of the steps that the Bank will take to achieve compliance with the minimum capital requirements specified in § 932.2 and § 932.3 of this chapter. The period of time for compliance with the minimum capital requirements shall be stated in the plan and shall not exceed three years from the effective date of the capital plan. When the Bank has achieved compliance with the leverage requirement of § 932.2 of this chapter, the leverage limit requirements of § 966.3(a) of this chapter shall cease to apply to that Bank.

(2) *Member transition.* (i) *Existing members.* A Bank's capital plan shall require any institution that was a member on November 12, 1999, and whose investment in Bank stock as of the effective date of the capital plan will be less than the minimum investment required by the plan, to comply with the minimum investment by a date specified in the Bank's capital plan. The length of the transition period shall be specified in the capital plan and shall not exceed three years. The capital plan shall describe the actions that the existing members are required to take to achieve compliance with the minimum investment, and may require such members to purchase additional Bank stock periodically over the course of the transition period.

(ii) *New members.* A Bank's capital plan shall require any institution that became a member after November 12, 1999, but prior to the effective date of the capital plan, to comply with the minimum investment specified in the Bank's capital plan as of the effective date of the plan. A Bank's capital plan shall require any institution that becomes a member after the effective date of the capital plan, to comply with the minimum investment upon becoming a member.

(3) *New business.* A Bank's capital plan shall require any member that obtains an advance or other services from the Bank, or that initiates any other business activity with the Bank against which the Bank is required to hold

capital, after the effective date of the capital plan to comply with the minimum investment specified in the Bank's capital plan for such advance, services, or activity at the time the transaction occurs.

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

Sec.

932.1 Risk management.
932.2 Total capital requirement.
932.3 Risk-based capital requirement.
932.4 Credit risk capital requirement.
932.5 Market risk capital requirement.
932.6 Operations risk capital requirement.
932.7 Reporting requirements.
932.8 Minimum liquidity requirements.
932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 932.1 Risk management.

Before its new capital plan may take effect, each Bank shall obtain the approval of the Finance Board for the internal market risk model or the internal cash flow model used to calculate the market risk component of its risk-based capital requirement, and for the risk assessment procedures and controls (whether established as part of its risk management policy or otherwise) to be used to manage its credit, market, and operations risks.

§ 932.2 Total capital requirement.

(a) Each Bank shall maintain at all times:

(1) Total capital in an amount at least equal to 4.0 percent of the Bank's total assets; and

(2) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining the leverage ratio, total capital shall be computed by multiplying the Bank's permanent capital by 1.5 and adding to this product all other components of total capital.

(b) For reasons of safety and soundness, the Finance Board may require an individual Bank to have and maintain a greater amount of total capital than mandated by paragraph (a)(1) of this section.

§ 932.3 Risk-based capital requirement.

(a) Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operations risk capital requirement, calculated in accordance with §§ 932.4, 932.5 and 932.6, respectively.

(b) For reasons of safety and soundness, the Finance Board may require an individual Bank to have and maintain a greater amount of permanent capital than required by paragraph (a) of this section.

§ 932.4 Credit risk capital requirement.

(a) *General requirement.* Each Bank's credit risk capital requirement shall be equal to the sum of the Bank's credit risk capital charges for all assets, off-balance sheet items and derivative contracts.

(b) *Credit risk capital charge for assets.* Except as provided in paragraph (i) of this section, each Bank's credit risk capital charge for an asset shall be equal to the book value of the asset multiplied by the credit risk percentage requirement assigned to that asset pursuant to paragraph (e)(2) of this section.

(c) *Credit risk capital charge for off-balance sheet items.* Each Bank's credit risk capital charge for an off-balance sheet item shall be equal to the credit equivalent amount of such item, as determined pursuant to paragraph (f) of this section multiplied by the credit risk percentage requirement assigned to that item pursuant to paragraph (e)(2) of this section, except that the credit risk percentage requirement applied to the credit equivalent amount for a stand-by letter of credit shall be that for an advance with the same remaining maturity as that stand-by letter of credit.

(d) *Derivative contracts.* (1) *Derivative contracts with non-member counterparties.* Except as provided in paragraph (j) of this section, each Bank's credit risk capital charge for a specific derivative contract entered into between a Bank and a non-member institution shall equal the sum of :

(i) The current credit exposure for the derivative contract, calculated in accordance with paragraph (g) or (h) of this section, as applicable, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to paragraph (e)(2) of this section, provided that:

(A) The remaining maturity of the derivative contract shall be deemed to be less than one year for the purpose of applying Table 1.1 or 1.3 of this part; and

(B) Any collateral held against an exposure from the derivative contract shall be applied to reduce the portion of the credit risk capital charge corresponding to the current credit exposure in accordance with the requirements of paragraph (e)(2)(ii)(B) of this section; plus

(ii) The potential future credit exposure for the derivative contract calculated in accordance with paragraph (g) or (h) of this section, as applicable, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to paragraph (e)(2) of this section, where the actual remaining maturity of the derivative contract is used to apply Table 1.1 or Table 1.3 of this part.

(2) *Derivative contracts with a member.* Except as provided in paragraph (j) of this section, the credit risk capital charge for any derivative contract entered into between a Bank and one of its member institutions shall be calculated in accordance with paragraph (d)(1) of this section. However, the credit risk percentage requirements used in the calculations shall be found in Table 1.1 of this part, which sets forth the credit risk percentage requirements for advances.

(e) *Determination of credit risk percentage requirements.*—(1) *Finance Board determination of credit risk percentage requirements.* The Finance Board shall determine, and update periodically, the credit risk percentage requirements set forth in Tables 1.1 through 1.4 of this part applicable to a Bank's assets, off-balance sheet items, and derivative contracts.

(2) *Bank determination of credit risk percentage requirements.* (i) Each Bank shall determine the credit risk percentage requirement applicable to each asset, each off-balance sheet item and each derivative contract by identifying the category set forth in Table 1.1, Table 1.2, Table 1.3 or Table 1.4 of this part to which the asset, item or derivative belongs, given, if applicable, its demonstrated credit rating and remaining maturity (as determined in accordance with paragraphs (e)(2)(ii) and (e)(2)(iii) of this section). The applicable credit risk percentage requirement for an asset, off-balance sheet item or derivative contract shall be used to calculate the credit risk capital charge for such asset, item, or derivative contract in accordance with paragraphs (b), (c) or (d) of this section respectively. The relevant categories and credit risk percentage requirements are provided in the following Tables 1.1 through 1.4 of this part:

TABLE 1.1.—REQUIREMENT FOR ADVANCES

Type of advances	Percentage applicable to advances
Advances with:	
Remaining maturity <= 4 years	0.07
Remaining maturity > 4 years to 7 years	0.20

TABLE 1.1.—REQUIREMENT FOR ADVANCES—Continued

Type of advances	Percentage applicable to advances
Remaining maturity > 7 years to 10 years	0.30
Remaining maturity > 10 years	0.35

TABLE 1.2.—REQUIREMENT FOR RATED RESIDENTIAL MORTGAGE ASSETS

Type of residential mortgage asset	Percentage applicable to residential mortgage assets
Highest Investment Grade	0.37
Second Highest Investment Grade	0.60
Third Highest Investment Grade	0.86
Fourth Highest Investment Grade	1.20
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade	2.40
Second Highest Below Investment Grade	4.80
All Other Below Investment Grade	34.00
Subordinated Classes of Mortgage Assets:	
Highest Investment Grade	0.37
Second Highest Investment Grade	0.60
Third Highest Investment Grade	1.60
Fourth Highest Investment Grade	4.45
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade	13.00
Second Highest Below Investment Grade	34.00
All Other Below Investment Grade	100.00

TABLE 1.3.—REQUIREMENT FOR RATED ASSETS OR RATED ITEMS OTHER THAN ADVANCES OR RESIDENTIAL MORTGAGE ASSETS

[Based on remaining maturity]

	Applicable percentage				
	≦ 1 year	>1 yr to 3 yrs	>3 yrs to 7yrs	>7 yrs to 10 yrs	>10 yrs
U.S. Government Securities	0.00	0.00	0.00	0.00	0.00
Highest Investment Grade	0.15	0.40	0.90	1.40	2.20
Second Highest Investment Grade	0.20	0.45	1.00	1.45	2.30
Third Highest Investment Grade	0.70	1.10	1.60	2.05	2.95
Fourth Highest Investment Grade	2.50	3.70	4.45	5.50	7.05
If Downgraded Below Investment Grade After Acquisition by Bank:					
Highest Below Investment Grade	10.00	13.00	13.00	13.00	13.00
Second Highest Below Investment Grade	26.00	34.00	34.00	34.00	34.00
All Other	100.00	100.00	100.00	100.00	100.00

TABLE 1.4.—REQUIREMENT FOR UNRATED ASSETS

Type of unrated asset	Applicable percentage
Cash	0.00
Premises, Plant, and Equipment	8.00
Investments Under § 940.3(e) & (f)	8.00

(ii) When determining the applicable credit risk percentage requirement from Tables 1.2 or 1.3 of this part, each Bank shall apply the following criteria:

(A) For assets or items that are rated directly by an NRSRO, the credit rating shall be the NRSRO's credit rating for the asset or item as determined in accordance with paragraph (e)(2)(iii) of this section.

(B) When using Table 1.3 of this part, for an asset, off-balance sheet item, or derivative contract that is not rated directly by an NRSRO, but for which an NRSRO rating has been assigned to any corresponding obligor counterparty, third party guarantor, or collateral backing the asset, item, or derivative, the credit rating that shall apply to the asset, item, or derivative, or portion of the asset, item, or derivative so guaranteed or collateralized, shall be the credit rating corresponding to such obligor counterparty, third party guarantor, or underlying collateral, as determined in accordance with paragraph (e)(2)(iii) of this section. If there are multiple obligor counterparties, third party guarantors, or collateral instruments backing an asset, item, or derivative not rated directly by an NRSRO, or any specific portion thereof, then the credit rating that shall apply to that asset, item, or derivative or specific portion thereof, shall be the highest credit rating among such obligor counterparties, third party guarantors, or collateral instruments, as determined in accordance with paragraph (e)(2)(iii) of this section. Assets, items or derivatives shall be deemed to be backed by collateral for purposes of this paragraph if the collateral is:

(*1*) Actually held by the Bank or an independent, third-party custodian, or, if permitted under the Bank's collateral agreement with such party, by the Bank's member or an affiliate of that member where the term ''affiliate'' has the same meaning as in § 950.1 of this chapter;

(*2*) Legally available to absorb losses;

(*3*) Of a readily determinable value at which it can be liquidated by the Bank;

(*4*) Held in accordance with the provisions of the Bank's member products policy established pursuant to § 917.4 of this chapter; and

(*5*) Subject to an appropriate discount to protect against price decline during the holding period, as well as the costs likely to be incurred in the liquidation of the collateral.

(C) When using Table 1.3 of this part, for an asset with a short-term credit rating from a given NRSRO, the credit

risk percentage requirement shall be based on the remaining maturity of the asset and the long-term credit rating provided for the issuer of the asset by the same NRSRO. Should the issuer of the short-term asset not have a long-term credit rating, the long-term equivalent rating shall be determined as follows:

(*1*) The highest short-term credit rating shall be equivalent to the third highest long-term rating;

(*2*) The second highest short-term rating shall be equivalent to the fourth highest long-term rating;

(*3*) The third highest short-term rating shall be equivalent to the fourth highest long-term rating; and

(*4*) If the short-term rating is downgraded to below investment grade after acquisition by the Bank, the short-term rating shall be equivalent to the second highest below investment grade long-term rating.

(D) For residential mortgage assets and other assets or items, or relevant portion of an asset or item, that do not meet the requirements of paragraphs (e)(2)(ii)(A), (e)(2)(ii)(B) or (e)(2)(ii)(C) of this section, and are not identified in Tables 1.1 or Table 1.4 of this part, each Bank shall determine its own credit rating for such assets or items, or relevant portion thereof, using credit rating standards available from an NRSRO or other similar standards. This credit rating, as determined by the Bank, shall be used to identify the applicable credit risk percentage requirement under Table 1.2 of this part for residential mortgage assets, or under Table 1.3 of this part for all other assets or items.

(E) The credit risk percentage requirement for mortgage assets that are acquired member assets described in § 955.1(a) of this chapter shall be assigned from Table 1.2 of this part based on the rating of those assets after taking into account any credit enhancement required by § 955.3 of this chapter. Should a Bank further enhance a pool of loans through the purchase of insurance or by some other means, the credit risk percentage requirement shall be based on the rating of such pool after the supplemental credit enhancement, except that the Finance Board retains the right to adjust the credit capital charge to account for any deficiencies with the supplemental enhancement on a case-by-case basis.

(iii) In determining the credit ratings under paragraph (e)(2)(ii)(A), (e)(2)(ii)(B) and (e)(2)(ii)(C) of this section, each Bank shall apply the following criteria:

(A) The most recent credit rating from a given NRSRO shall be considered. If only one NRSRO has rated an asset or item, that NRSRO's rating shall be used. If an asset or item has received credit ratings from more than one NRSRO, the lowest credit rating from among those NRSROs shall be used.

(B) Where a credit rating has a modifier (*e.g.,* A–1+ for short-term ratings and A+ or A − for long-term ratings) the credit rating is deemed to be the credit rating without the modifier (*e.g.,* A–1+ = A–1 and A+ or A–= A);

(f) *Calculation of credit equivalent amount for off-balance sheet items.* (1) *General requirement.* The credit equivalent amount for an off-balance sheet item shall be determined by a Finance Board approved model or shall be equal to the face amount of the instrument multiplied by the credit conversion factor assigned to such risk category of instruments, subject to the exceptions in paragraph (f)(2) of this section, provided in the following Table 2 of this part:

TABLE 2.—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (in percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Commitments to make advances	
Commitments to make or purchase other loans	
Standby letters of credit	50
Other commitments with original maturity of over one year	
Other commitments with original maturity of one year or less	20

(2) *Exceptions.* The credit conversion factor shall be zero for Other Commitments With Original Maturity of Over One Year and Other Commitments With Original Maturity of One Year or Less, for which credit conversion factors of 50 percent or 20 percent would otherwise apply, that are unconditionally cancelable, or that effectively provide for automatic cancellation, due to the deterioration in a borrower's creditworthiness, at any time by the Bank without prior notice.

(g) *Calculation of current and potential future credit exposures for single derivative contracts.* (1) *Current credit exposure.* The current credit exposure for a derivative contract that is not subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section shall be:

(i) If the mark-to-market value of the contract is positive, the mark-to-market value of the contract; or (ii) If the mark-to-market value of the contract is zero or negative, zero.

(2) *Potential future credit exposure.* (i) The potential future credit exposure for a single derivative contract, including a derivative contract with a negative mark-to-market value, shall be calculated using an internal model approved by the Finance Board or, in the alternative, by multiplying the effective notional amount of the derivative contract by one of the assigned credit conversion factors, modified as may be required by paragraph (g)(2)(ii) of this section, for the appropriate category as provided in the following Table 3 of this part:

TABLE 3.—CREDIT CONVERSION FACTORS FOR POTENTIAL FUTURE CREDIT EXPOSURE DERIVATIVE CONTRACTS

[In percent]

Residual maturity	Interest rate	Foreign exchange and gold	Equity	Precious metals except gold	Other commodities
One year or less	0	1	6	7	10
Over 1 year to five years	.5	5	8	7	12
Over five years	1.5	7.5	10	8	15

(ii) In applying the credit conversion factors in Table 3 of this part the following modifications shall be made:

(A) For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract; and

(B) For derivative contracts that automatically reset to zero value following a payment, the residual maturity equals the time until the next payment; however, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

(iii) If a Bank uses an internal model to determine the potential future credit exposure for a particular type of derivative contract, the Bank shall use the same model for all other similar types of contracts. However, the Bank may use an internal model for one type of derivative contract and Table 3 of this part for another type of derivative contract.

(iv) Forwards, swaps, purchased options and similar derivative contracts not included in the Interest Rate, Foreign Exchange and Gold, Equity, or Precious Metals Except Gold categories shall be treated as other commodities contracts when determining potential future credit exposures using Table 3 of this part.

(v) If a Bank uses Table 3 of this part to determine the potential future credit exposures for credit derivative contracts, the credit conversion factors provided in Table 3 for equity contracts shall also apply to the credit derivative contracts entered into with investment grade counterparties. If the counterparty is downgraded to below investment grade, the credit conversion factor provided in Table 3 of this part for other commodity contracts shall apply.

(h) *Calculation of current and potential future credit exposures for multiple derivative contracts subject to a qualifying bilateral netting contract*—

(1) Current credit exposure. The current credit exposure for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section, shall be calculated on a net basis and shall equal:

(i) The net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to a qualifying bilateral netting contract, if the net sum of the mark-to-market values is positive; or

(ii) Zero, if the net sum of the mark-to-market values is zero or negative.

(2) *Potential future credit exposure.* The potential future credit exposure for each individual derivative contract from among a group of derivative contracts that are executed with a single counterparty and subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section shall be calculated as follows:

$A_{net} = 0.4 \times A_{gross} + (0.6 \times NGR \times A_{gross})$,

where:

(i) A_{net} is the potential future credit exposure for an individual derivative contract subject to the qualifying bilateral netting contract;

(ii) A_{gross} is the gross potential future credit exposure, *i.e.,* the potential future credit exposure for the individual derivative contract, calculated in accordance with paragraph (g)(2) of this section but without regard to the fact that the contract is subject to the qualifying bilateral netting contract;

(iii) NGR is the net to gross ratio, *i.e.,* the ratio of the net current credit exposure of all the derivative contracts subject to the qualifying bilateral netting contract, calculated in accordance with paragraph (h)(1) of this section, to the gross current credit exposure; and

(iv) The gross current credit exposure is the sum of the positive current credit exposures of all the individual derivative contracts subject to the qualifying bilateral netting contract, calculated in accordance with paragraph (g)(1) of this section but without regard to the fact that the contract is subject to the qualifying bilateral netting contract.

(3) *Qualifying bilateral netting contract.* A bilateral netting contract shall be considered a qualifying bilateral netting contract if the following conditions are met:

(i) The netting contract is in writing;

(ii) The netting contract is not subject to a walkaway clause;

(iii) The netting contract provides that the Bank would have a single legal claim or obligation either to receive or to pay only the net amount of the sum of the positive and negative mark-to-market values on the individual derivative contracts covered by the netting contract in the event that a counterparty, or a counterparty to whom the netting contract has been assigned, fails to perform due to default, insolvency, bankruptcy, or other similar circumstance;

(iv) The Bank obtains a written and reasoned legal opinion that represents, with a high degree of certainty, that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the Bank's exposure to be the net amount under:

(A) The law of the jurisdiction by which the counterparty is chartered or the equivalent location in the case of non-corporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(B) The law of the jurisdiction that governs the individual derivative contracts covered by the netting contract; and

(C) The law of the jurisdiction that governs the netting contract;

(v) The Bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the netting contract continues to satisfy the requirements of this section; and

(vi) The Bank maintains in its files documentation adequate to support the netting of a derivative contract.

(i) *Credit risk capital charge for assets hedged with credit derivatives*—(1) Credit derivatives with a remaining maturity of one year or more. The credit risk capital charge for an asset that is hedged with a credit derivative that has a remaining maturity of one year or more may be reduced only in accordance with paragraph (i)(3) or (i)(4) of this section and only if the credit derivative provides substantial protection against credit losses.

(2) *Credit derivatives with a remaining maturity of less than one year.* The credit risk capital charge for an asset that is hedged with a credit derivative that has a remaining maturity of less than one year may be reduced only in accordance with paragraph (i)(3) of this section and only if the remaining maturity on the credit derivative is identical to or exceeds the remaining maturity of the hedged asset and the credit derivative provides substantial protection against credit losses.

(3) *Capital charge reduced to zero.* The credit risk capital charge for an asset shall be zero if a credit derivative is used to hedge the credit risk on that asset in accordance with paragraph (i)(1) or (i)(2) of this section, provided that:

(i) The remaining maturity for the credit derivative used for the hedge is identical to or exceeds the remaining maturity for the hedged asset, and either:

(A) The asset referenced in the credit derivative is identical to the hedged asset; or

(B) The asset referenced in the credit derivative is different from the hedged asset, but only if the asset referenced in the credit derivative and the hedged asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to or more junior than the hedged asset and

has the same maturity as the hedged asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph (d) of this section is still applied.

(4) *Capital charge reduction in certain other cases.* The credit risk capital charge for an asset hedged with a credit derivative in accordance with paragraph (i)(1) of this section shall equal the sum of the credit risk capital charges for the hedged and unhedged portion of the asset provided that:

(i) The remaining maturity for the credit derivative is less than the remaining maturity for the hedged asset and either:

(A) The asset referenced in the credit derivative is identical to the hedged asset; or

(B) The asset referenced in the credit derivative is different from the hedged asset, but only if the asset referenced in the credit derivative and the hedged asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to or more junior than the hedged asset and has the same maturity as the hedged asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the unhedged portion of the asset equals:

(A) The credit risk capital charge for the hedged asset, calculated as the book value of the hedged asset multiplied by the hedged asset's credit risk percentage requirement assigned pursuant to paragraph (e)(2) of this section where the appropriate credit rating is that for the hedged asset and the appropriate maturity is the remaining maturity of the hedged asset; minus

(B) The credit risk capital charge for the hedged asset, calculated as the book value of the hedged asset multiplied by the hedged asset's credit risk percentage requirement assigned pursuant to paragraph (e)(2) of this section where the appropriate credit rating is that for the hedged asset but the appropriate maturity is deemed to be the remaining maturity of the credit derivative; and

(iii) The credit risk capital charge for the hedged portion of the asset is equal to the credit risk capital charge for the credit derivative, calculated in accordance with paragraph (d) of this section.

(j) *Zero Credit risk capital charge for certain derivative contracts.* The credit risk capital charge for the following derivative contracts shall be zero:

(1) A foreign exchange rate contract with an original maturity of 14 calendar days or less (gold contracts do not qualify for this exception); and

(2) A derivative contract that is traded on an organized exchange requiring the daily payment of any variations in the market value of the contract.

(k) *Date of calculations.* Unless otherwise directed by the Finance Board, each Bank shall perform all calculations required by this section using the assets, off-balance sheet items, and derivative contracts held by the Bank, and, if applicable, the values or credit ratings of such assets, items, or derivatives as of the close of business of the last business day of the month for which the credit risk capital charge is being calculated.

§ 932.5 Market risk capital requirement.

(a) *General requirement.* (1) Each Bank's market risk capital requirement shall equal the sum of:

(i) The market value of the Bank's portfolio at risk from movements in interest rates, foreign exchange rates, commodity prices, and equity prices that could occur during periods of market stress, where the market value of the Bank's portfolio at risk is determined using an internal market risk model that fulfills the requirements of paragraph (b) of this section and that has been approved by the Finance Board; and

(ii) The amount, if any, by which the Bank's current market value of total capital is less than 85 percent of the Bank's book value of total capital, where:

(A) The current market value of the total capital is calculated by the Bank using the internal market risk model approved by the Finance Board under paragraph (d) of this section; and

(B) The book value of total capital is the same as the amount of total capital reported by the Bank to the Finance Board under § 932.7 of this part.

(2) A Bank may substitute an internal cash flow model to derive a market risk capital requirement in place of that calculated using an internal market risk model under paragraph (a)(1) of this section, provided that:

(i) The Bank obtains Finance Board approval of the internal cash flow model and of the assumptions to be applied to the model; and

(ii) The Bank demonstrates to the Finance Board that the internal cash flow model subjects the Bank's assets and liabilities, off-balance sheet items and derivative contracts, including related options, to a comparable degree of stress for such factors as will be required for an internal market risk model.

(b) *Measurement of market value at risk under a Bank's internal market risk model.* (1) Except as provided under paragraph (a)(2) of this section, each Bank shall use an internal market risk model that estimates the market value of the Bank's assets and liabilities, off-balance sheet items, and derivative contracts, including any related options, and measures the market value of the Bank's portfolio at risk of its assets and liabilities, off-balance sheet items, and derivative contracts, including related options, from all sources of the Bank's market risks, except that the Bank's model need only incorporate those risks that are material.

(2) The Bank's internal market risk model may use any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, for estimating the market value of the Bank's portfolio at risk, provided that any measurement technique used must cover the Bank's material risks.

(3) The measures of the market value of the Bank's portfolio at risk shall include the risks arising from the non-linear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the options' underlying rates or prices.

(4) The Bank's internal market risk model shall use interest rate and market price scenarios for estimating the market value of the Bank's portfolio at risk, but at a minimum:

(i) The Bank's internal market risk model shall provide an estimate of the market value of the Bank's portfolio at risk such that the probability of a loss greater than that estimated shall be no more than one percent;

(ii) The Bank's internal market risk model shall incorporate scenarios that reflect changes in interest rates, interest rate volatility, and shape of the yield curve, and changes in market prices, equivalent to those that have been observed over 120-business day periods of market stress. For interest rates, the relevant historical observations should be drawn from the period that starts at the end of the previous month and goes back to the beginning of 1978;

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to the Finance Board;

(B) Representative of the periods of the greatest potential market stress given the Bank's portfolio, and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may

incorporate empirical correlations among interest rates.

(5) For any consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, each Bank shall, in addition to fulfilling the criteria of paragraph (b)(4) of this section, calculate an estimate of the market value of its portfolio at risk due to the material foreign exchange, equity price or commodity price risk, such that, at a minimum:

(i) The probability of a loss greater than that estimated shall not exceed one percent;

(ii) The scenarios reflect changes in foreign exchange, equity, or commodity market prices that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period; and

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to the Finance Board;

(B) Representative of the periods of greatest potential stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations within or among foreign exchange rates, equity prices, or commodity prices.

(c) *Independent validation of Bank internal market risk model or internal cash flow model.* (1) Each Bank shall conduct an independent validation of its internal market risk model or internal cash flow model within the Bank that is carried out by personnel not reporting to the business line responsible for conducting business transactions for the Bank. Alternatively, the Bank may obtain independent validation by an outside party qualified to make such determinations. Validations shall be done on an annual basis, or more frequently as required by the Finance Board.

(2) The results of such independent validations shall be reviewed by the Bank's board of directors and provided promptly to the Finance Board.

(d) *Finance Board approval of Bank internal market risk model or internal cash flow model.* Each Bank shall obtain Finance Board approval of an internal market risk model or an internal cash flow model, including subsequent material adjustments to the model made by the Bank, prior to the use of any model. Each Bank shall make such adjustments to its model as may be directed by the Finance Board.

(e) *Date of calculations.* Unless otherwise directed by the Finance Board, each Bank shall perform any calculations or estimates required under this section using the assets and liabilities, off-balance sheet items, and derivative contracts held by the Bank, and if applicable, the values of any such holdings, as of the close of business of the last business day of the month for which the market risk capital requirement is being calculated.

§ 932.6 Operations risk capital requirement.

(a) *General requirement.* Except as authorized under paragraph (b) of this section, each Bank's operations risk capital requirement shall at all times equal 30 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement.

(b) *Alternative requirements.* With the approval of the Finance Board, each Bank may have an operations risk capital requirement equal to less than 30 percent but no less than 10 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement if:

(1) The Bank provides an alternative methodology for assessing and quantifying an operations risk capital requirement; or

(2) The Bank obtains insurance to cover operations risk from an insurer rated at least the second highest investment grade credit rating by an NRSRO.

§ 932.7 Reporting requirements.

Each Bank shall report to the Finance Board by the 15th business day of each month its risk-based capital requirement by component amounts, and its actual total capital amount and permanent capital amount, calculated as of the close of business of the last business day of the preceding month, or more frequently, as may be required by the Finance Board.

§ 932.8 Minimum liquidity requirements.

In addition to meeting the deposit liquidity requirements contained in § 965.3 of this chapter, each Bank shall hold contingency liquidity in an amount sufficient to enable the Bank to meet its liquidity needs, which shall, at a minimum, cover five business days of inability to access the consolidated obligation debt markets. An asset that has been pledged under a repurchase agreement cannot be used to satisfy minimum liquidity requirements.

§ 932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

(a) *Unsecured extensions of credit to single counterparty.* (1) *General requirement.* Unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on-and off-balance sheet transactions shall not exceed the product of the maximum capital exposure limit applicable to such counterparty, as set forth in paragraph (a)(2) and Table 4 of this part, multiplied by the lesser of:

(i) The Bank's total capital; or

(ii) The counterparty's Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by the counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Bank determination applicable maximum exposure limits.* The applicable maximum capital exposure limits for specific counterparties are assigned to each counterparty based upon the credit rating of the counterparty, as determined in accordance with paragraph (a)(3) of this section, and are provided in the following Table 4 of this part:

TABLE 4.—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTERPARTY BY COUNTERPARTY CREDIT RATING CATEGORY

Credit rating of counterparty category	Maximum capital exposure limit (in percent)
Highest Investment Grade	15
Second Highest Investment Grade	12
Third Highest Investment Grade	6
Fourth Highest Investment Grade	1.5
Below Investment Grade or Other	1

(3) *Bank determination of applicable credit ratings.* In determining the applicable credit rating category under Table 4 of this part, the following criteria shall be applied:

(i) The most recent credit rating from a given NRSRO shall be considered. If only one NRSRO has rated the counterparty, that NRSRO's rating shall be used. If a counterparty has received credit ratings from more than one NRSRO, the lowest credit rating from among those NRSROs shall be used;

(ii) Where a credit rating has a modifier, the credit rating is deemed to

be the credit rating without the modifier;

(iii) If a counterparty has received different credit ratings for its transactions with short-term and long-term maturities:

(A) The higher credit rating shall apply for purposes of determining the allowable maximum capital exposure limit applicable to the total amount of unsecured credit extended by the Bank to such counterparty; and

(B) The lower credit rating shall apply for purposes of determining the allowable maximum capital exposure limit applicable to the amount of unsecured credit extended by the Bank to such counterparty for the transactions with maturities governed by that rating.

(iv) If a counterparty is placed on a credit watch for a potential downgrade by an NRSRO, the credit rating from that NRSRO at the next lower grade shall be used; and

(v) If a counterparty is not rated by a NRSRO, the Bank shall determine the applicable credit rating by using credit rating standards available from an NRSRO or other similar standards.

(b) *Unsecured extensions of credit to affiliated counterparties.* The total amount of unsecured extensions of credit by a Bank to all affiliated counterparties shall not exceed the product of the maximum capital exposure limit provided under Table 4 of this part based upon the highest credit rating of the affiliated counterparties, as determined in accordance with paragraph (a)(3) of this section, multiplied by the lesser of:

(1) The Bank's total capital; or

(2) The combined Tier 1 capital, or if Tier 1 capital is not available, the combined total capital (as defined by each affiliated counterparty's principal regulator) or some similar comparable measure identified by the Bank, of all of the affiliated counterparties.

(c) *Reporting requirements*—(1) *Total unsecured extensions of credit.* Each Bank shall report monthly to the Finance Board the amount of the Bank's total unsecured extensions of credit arising from on- and off-balance sheet transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of:

(i) The Bank's total capital; or

(ii) The counterparty's, or affiliated counterparties' combined, Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by each counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Total secured and unsecured extensions of credit.* Each Bank shall report monthly to the Finance Board the amount of the Bank's total secured and unsecured extensions of credit arising from on- or off-balance sheet transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets.

PART 933—BANK CAPITAL STRUCTURE PLANS

Sec.

933.1 Submission of plan.
933.2 Contents of plan.
933.3 Independent review of capital plan.
933.4 Transition provisions.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

§ 933.1 Submission of Plan.

(a) *In general.* By no later than October 29, 2001, the board of directors of each Bank shall submit to the Finance Board a plan to establish and implement a new capital structure for that Bank, which plan shall comply with part 931 of this chapter and under which, when implemented, the Bank shall have sufficient total and permanent capital to comply with the regulatory capital requirements established by part 932 of this chapter. The Finance Board, upon a demonstration of good cause submitted by the board of directors of a Bank, may approve a reasonable extension of the 270-day period for submission of the capital plan. A Bank shall not implement its capital plan, or any amendment to the plan, without Finance Board approval.

(b) *Failure to submit a capital plan.* If a Bank fails to submit a capital plan to the Finance Board by October 29, 2001, including any approved extension, the Finance Board may establish a capital plan for that Bank, take any enforcement action against the Bank, its directors, or its executive officers authorized by section 2B(a) of the Act (12 U.S.C. 1422b(a)), or merge the Bank pursuant to section 26 of the Act (12 U.S.C. 1446) into any other Bank that has submitted a capital plan.

(c) *Consideration of the plan.* After receipt of a Bank's capital plan, the Finance Board may return the plan to the Bank if it does not comply with section 6 of the Act (12 U.S.C. 1426) or any regulatory requirement or is otherwise incomplete or materially deficient. If the Finance Board accepts a capital plan for review, it may require the Bank to submit additional information regarding its plan or to amend the plan, prior to determining whether to approve the plan. The Finance Board may approve a capital plan as submitted or as amended, or may condition its approval on the Bank's compliance with certain stated conditions, and may require that the capital plans of all Banks take effect on the same date.

§ 933.2 Contents of plan.

The capital plan for each Bank shall include, at a minimum, provisions addressing the following matters:

(a) *Minimum investment.* (1) The capital plan shall require each member to purchase and maintain a minimum investment in the capital stock of the Bank, in accordance with § 931.3, of this chapter and shall prescribe the manner in which the minimum investment is to be calculated. The plan shall require each member to maintain its minimum investment in the Bank's stock for as long as it remains a member and, with regard to Bank stock purchased to support an advance or other business activity, for as long as the advance or business activity remains outstanding.

(2) The capital plan shall specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a member of the Bank, and shall specify the amount and class (or classes) of Bank stock that a member is required to own in order to obtain advances from, or to engage in other business transactions with, the Bank. If a Bank requires its members to satisfy its minimum investment through the purchase of one or more combinations of Class A and Class B stock, the authorized combinations of stock shall be specified in the capital plan, which shall afford the members the option of satisfying the minimum investment through the purchase of any such combination of stock.

(3) The capital plan may establish a minimum investment that is calculated as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of the other business activities conducted with the member, on any other basis approved by the Finance Board, or on any combination of the above.

(4) The minimum investment established by the capital plan shall be set at a level that, when applied to all members, provides sufficient capital for the Bank to comply with its minimum capital requirements, as specified in part 932 of this chapter. The capital plan shall require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that the stock required to be purchased and maintained by the members is sufficient to allow the Bank to comply with its minimum capital requirements. The plan shall require each member to

comply promptly with any adjusted minimum investment established by the board of directors of the Bank, but may allow a member a reasonable time to do so and may allow a member to reduce its outstanding business with the Bank as an alternative to purchasing additional stock.

(b) *Classes of capital stock.* The capital plan shall specify the class or classes of stock (including subclasses, if any) that the Bank will issue, and shall establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. A Bank may establish preferences relating to, but not limited to, the dividend, voting, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to § 915.5 of this chapter shall expressly state the voting rights of each class of stock with regard to the election of Bank directors. The capital plan shall provide that the owners of the Class B stock own the retained earnings, surplus, undivided profits, and equity reserves of the Bank, but shall have no right to receive any portion of those items, except through declaration of a dividend or capital distribution approved by the board of directors or through the liquidation of the Bank.

(c) *Dividends.* The capital plan shall establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any capital requirement or if after paying the dividend it would not be in compliance with any capital requirement.

(d) *Initial issuance.* The capital plan shall specify the date on which the Bank will implement the new capital structure, and shall establish the manner in which the Bank will issue Class A and/or Class B stock to its existing members, as well as to eligible institutions that subsequently become members. The capital plan shall address how the Bank will retire the stock that is outstanding as of the effective date, including stock held by a member that does not affirmatively elect to convert or exchange its existing stock to either Class A or Class B stock, or some combination thereof.

(e) *Stock transactions.* The capital plan shall establish the criteria for the issuance, redemption, repurchase, transfer, and retirement of stock issued by the Bank. The capital plan also:

(1) Shall provide that the Bank may not issue stock other than in accordance with § 931.2 of this chapter;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank;

(3) Shall provide that the stock of the Bank may be transferred only in accordance with § 931.6 of this chapter, and may be traded only between the Bank and its members;

(4) May provide for a minimum investment for members that purchase Class B stock that is lower than the minimum investment for members that purchase Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(5) Shall specify the fee, if any, to be imposed on a member that cancels a request to redeem Bank stock; and

(6) Shall specify the period of notice that the Bank will provide to a member before the Bank, on its own initiative, determines to repurchase any excess Bank stock from a member.

(f) *Termination of membership.* The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from prepayment of advances prior to their stated maturity.

(g) *Implementation.* The capital plan shall demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and its regulatory risk-based capital requirement after the plan is implemented.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0059 with an expiration date of November 30, 2003.)

§ 933.3 Independent review of capital plan.

Prior to submitting its capital plan, each Bank shall conduct a review of the plan by an independent certified public accountant to ensure, to the extent possible, that the implementation of the plan would not result in any write-down of the redeemable stock owned by its members, and shall conduct a separate review by at least one NRSRO to determine, to the extent possible, whether the implementation of the plan would have a material effect on the credit rating of the Bank. The Bank shall submit a copy of each report to the Finance Board as part of its proposed capital plan.

§ 933.4 Transition provisions.

(a) The capital plan of a Bank may include a transition provision that would allow a period of time, not to exceed three years, during which the Bank shall increase its total and permanent capital to levels that are sufficient to comply with its minimum leverage capital requirement and its minimum risk-based capital requirement. The capital plan of a Bank may also include a transition provision that would allow a period of time, not to exceed three years, during which institutions that were members of the Bank on November 12, 1999, shall increase the amount of Bank stock to a level that is sufficient to comply with the minimum investment established by the capital plan. The length of the transition periods need not be identical.

(b) Any transition provision shall comply with the requirements of § 931.9.

PART 956—FEDERAL HOME LOAN BANK INVESTMENTS

19. The authority citation for part 956 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1429, 1430, 1430b, 1431, 1436.

20. Amend § 956.1 by removing the definition of the term ''NRSRO'' and by adding, in alphabetical order, definitions of the term ''derivative contracts'' and ''repurchase agreement'' to read as follows:

§ 956.1 Definitions.

* * * * *

Derivative contract has the meaning set forth in § 930.1 of this chapter.

* * * * *

Repurchase agreement has the meaning set forth in § 930.1 of this chapter.

21. Revise the last sentence of paragraph (b) of § 956.3 to read as follows:

§ 956.3 Prohibited investments and prudential rules.

* * * * *

(b) * * * A Bank may participate in consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, provided that the Bank meets the requirements of § 966.8(d) of this chapter, and all other applicable requirements related to issuing consolidated obligations.

22. Add a new § 956.5 to read as follows:

§ 956.5 Authorization for derivative contracts and other transactions.

A Bank may enter into the following types of transactions:

(a) Derivative contracts;

(b) Standby letters of credit, pursuant to the requirements of 12 CFR part 961;

(c) Forward asset purchases and sales;

(d) Commitments to make advances; and

(e) Commitment to make or purchase other loans.

23. Add a new § 956.6, to read as follows:

§ 956.6 Use of hedging instruments.

(a) *Applicability of GAAP.* Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

(b) *Documentation requirements.* (1) Transactions with a single counterparty shall be governed by a single master agreement when practicable.

(2) A Bank's agreement with the counterparty for over-the-counter derivative contracts shall include:

(i) A requirement that market value determinations and subsequent adjustments of collateral be made at least on a monthly basis;

(ii) A statement that failure of a counterparty to meet a collateral call will result in an early termination event;

(iii) A description of early termination pricing and methodology, with the methodology reflecting a reasonable estimate of the market value of the over-the-counter derivative contract at termination (standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology may be used to satisfy this requirement); and

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

PART 966—CONSOLIDATED OBLIGATIONS

24. The authority citation of part 966 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, and 1431.

25. Revise § 966.8 by adding new paragraph (d) to read as follows:

§ 966.8 Conditions for issuance of consolidated obligations.

* * * * *

(d) If a Bank participates in any CO denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, then the Bank shall meet the following requirements:

(1) The relevant foreign exchange, equity price or commodity price risks associated with the CO must be hedged in accordance with § 956.6 of this chapter;

(2) If there is a default on the part of a counterparty to a contract hedging the foreign exchange, equity or commodity price risk associated with a CO, the Bank shall enter into a replacement contract in a timely manner and as soon as market conditions permit.

Dated: December 20, 2000.

By the Board of Directors of the Federal Housing Finance Board.

William C. Apgar,

HUD Secretary Designee to the Board.

[FR Doc. 01–1253 Filed 1–29–01; 8:45 am]

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Federal Register

Tuesday,
January 30, 2001

Part III

Department of Commerce

International Trade Administration

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From Latvia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Keir Whitson or Gabriel Adler at (202) 482–1777 or (202) 482–3813, respectively; AD/CVD Enforcement, Office 5, Group II, 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 Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from Latvia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, the Department issued antidumping questionnaires to the only producer/exporter of subject merchandise in Latvia, Liepajas Metalurgs (LM).[2]

As of the date of initiation of this investigation, Latvia was still considered a non-market economy (NME) country. On August 24, 2000, the Department received a letter from Latvia's Ministry of Foreign Affairs requesting that the Department revoke the NME status of Latvia under section 771(18)(A) of the Act. After a thorough examination of all relevant information available to the Department, we have revoked Latvia's NME status under section 771(18)(A) of the Act. *See Memorandum from Holly A. Kuga to Troy H. Cribb: Non-Market Economy Status Revocation* (January 12, 2001). This preliminary determination is therefore based on information contained in the market economy questionnaire responses submitted by LM.

On November 9, 2000, the petitioner requested a postponement of the preliminary determinations in all concurrent rebar investigations. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, and Ukraine*, 65 FR 69909 (November 21, 2000).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On January 5, 2001, LM requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. LM made a separate request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, and LM is the sole producer of the subject merchandise in Latvia, we have postponed the final determination for Latvia until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI is April 1, 1999, through March 31, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Critical Circumstances

In the petition filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Latvia. On July 18, 2000, concurrent with the initiations of the LTFV investigation on imports of rebar from Latvia, the Department announced its intention to investigate the petitioner's allegation that critical circumstances exist with respect to imports of rebar from Latvia. On August 14, 2000, the International Trade Commission (ITC) determined that there is a reasonable indication of material injury to the domestic industry from imports of rebar from Latvia.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist, if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent or more during the ''relatively short period'' of time may be considered ''massive.''

With respect section to section 733(e)(1)(A)(i) of the Act, we do not find that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, inasmuch as no country has issued a finding of dumping against Latvian rebar. Further, with respect to section 733(e)(1)(A)(ii) of the Act, the magnitude of the dumping margins found in this preliminary determination is insufficient to conclude that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales. As such, we are issuing a preliminary negative critical circumstances determination.

Although unnecessary in this case, we have also examined whether imports have been massive over a ''relatively short period'' of time, pursuant to section 733(e)(1)(B) of the Act. To do so, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.*, the base period), and three months following the filing of the petition (*i.e.*, the comparison period). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petitioner argues that importers, exporters, or producers of rebar from Latvia had reason to believe that an antidumping proceeding was likely before the filing of the petition. Based upon information contained in the petition, we found that press reports and published statements were sufficient to establish that, by December 1999, importers, exporters, and foreign producers knew or should have known that a proceeding was likely concerning rebar from Latvia. As a result, the Department has considered whether there have been massive imports after that time based on a comparison of periods immediately preceding and following the end of December 1999. *See Memorandum from Gary Taverman to Holly A. Kuga, Antidumping Duty Investigations of Steel Concrete Reinforcing Bar from Latvia—Preliminary Negative Determination of Critical Circumstances (Critical Circumstances Preliminary Determination Memorandum*), dated January 16, 2001.

In order to determine whether imports from Latvia have been massive, the Department requested that LM provide its shipment data for the last three years. Based on our analysis of the shipment data reported, because imports have decreased during the comparison period, we preliminarily find that the criterion under section 733(e)(1)(B) of the Act has not been met, *i.e.*, there have not been massive imports of rebar from LM over a relatively short time. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, we preliminarily determine that critical circumstances do not exist for imports of rebar produced by LM.

Regarding the ''all others'' category, it is the Department's practice to conduct its critical circumstances analysis of companies in this category based on the experience of the investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebar from Turkey*), 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the ''all others'' rate). However, the Department does not automatically extend a critical circumstances determination to companies covered by the ''all others'' rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574, 30585 (June 8, 1999) (*Stainless Steel Sheet and Strip from Japan*). Instead, the Department may consider the traditional critical circumstances criteria with respect to the companies covered by the ''all others'' rate.

In determining whether imports from the ''all others'' category have been massive, the Department followed its normal practice of conducting its critical circumstances analysis of companies in this category based on the experience of the investigated companies. In this case, since we are unaware of any other Latvian rebar producers, it is appropriate to extend the experience of LM to the ''all others'' category. For this reason, we determine that the second criterion under section 733(e)(1) of the Act has not been met and that there have not been massive imports of rebar from the ''all others'' category over a relatively short time. Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we

preliminarily find that critical circumstances do not exist for imports of rebar produced by the ''all others'' category.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. LM is the only known producer/exporter of subject merchandise in Latvia.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondent covered by the description in the Scope of Investigation section, above, and sold in the comparison market during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on three criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: type of steel, yield strength, and size. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of rebar from Latvia were made in the United States at LTFV, we compared the export price (EP) to the normal value (NV), as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and, subsequently, compared these to weighted-average home market or third-country prices, as appropriate.

Export Price

For the price to the United States, we calculated an EP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States. We calculated EP based on the packed, delivered, ex-factory prices charged to the first unaffiliated purchaser in the United States prior to importation. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight) and foreign brokerage and handling.

We note that, as explained below, we did not calculate dumping margins for certain sales by LM to an affiliated customer based on the reported databases. Instead, in accordance with section 776(a) of the Act, we preliminarily relied on adverse facts available in calculating the dumping margins for the transactions in question.

On December 1, 2000, the Department issued a memorandum stating that, for purposes of this investigation, it had found LM to be affiliated with one of its customers. *See Memorandum from Gabriel Adler to Gary Taverman: Antidumping Investigation of Steel Concrete Reinforcing Bars from Latvia; Affiliation* (December 1, 2000). On December 4, 2000, the Department issued a supplemental sales questionnaire to LM requesting, in part, that LM provide the downstream sales data for all sales made during the POI by its affiliated customer to unaffiliated parties in the United States. On December 6, 2000, LM stated that, while it did not view itself as affiliated with the customer in question, it had requested that its customer provide downstream sales data for its sales made to the United States during the POI. LM further stated that the affiliate was not willing to provide the Department with the requested information. On December 8, 2000, LM again stated that it could not provide this data to the Department.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d) and (e) of the Act, use the facts otherwise available in reaching the applicable determination under this title.'' The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

While LM has been generally cooperative over the course of this antidumping proceeding, it has not been cooperative in responding to the Department's specific request for downstream sales data. As a result, we are applying the facts otherwise available for all sales made to the United States through the affiliate in question. Moreover, we are making an adverse inference with respect to this determination. Specifically, for sales made through this affiliated customer, we have assigned a margin calculated on the basis of the lowest net U.S. price

reported for any sale not involving the affiliate, and the highest normal value calculated for any product reported by the respondent.[3]

We note that, since most U.S. sales were made through the affiliate in question, the use of facts otherwise available extends to the majority of the respondent's U.S. sales. In reaching this preliminary determination, we are mindful that a respondent's failure to report the appropriate sales prices for the majority of U.S. sales might warrant wholesale rejection of the submitted responses, and reliance entirely on the facts otherwise available. In view of the specific circumstances presented in this case, however, we preliminarily believe at this time that it is more appropriate to base the dumping margins in part on that portion of the reported sales database that is not directly in question as a result of the respondent's omission. Given the nature of control between LM and its affiliate (where the affiliate has some measure of control over LM, but LM lacks control over its affiliate), the failure of the affiliate to provide requested sales data, while warranting an adverse inference with respect to those sales, does not necessarily impugn LM's compliance in reporting sales to other customers. While the factors above do not excuse the affiliate's failure to submit the requested sales information, they do provide a context in which it is appropriate to limit the use of adverse facts available to that specific omission.

Normal Value for Market Economy Analysis

A. Selection of Comparison Markets for Market Economy Countries

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For the Latvia case, we found that LM does not have a viable home market for sales of rebar. Therefore, the respondent submitted data for sales to Germany, its largest third-country market, for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the Calculation of Normal Value Based on Third-Country Market Prices section below.

B. Cost of Production Analysis

On October 26, 2000, the petitioner made a sales below cost allegation against LM. Based on this allegation and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of rebar manufactured by LM were made at prices below the COP. As a result, the Department has conducted an investigation to determine whether LM made sales in its third-country comparison market at prices below the COP during the POI, within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, selling expenses, packing expenses and interest expenses.

We relied on the COP data submitted by LM in its cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued. We made company-specific adjustments to the reported COP as follows. First, we adjusted LM's reported G&A expense to include certain non-operating income and expense amounts that relate to the general operations of the company. Second, we adjusted the cost of goods sold amount used as the denominator in LM's G&A and interest expense rate calculations by excluding certain non-operating income and expense amounts included in the numerator of the G&A expense rate calculation. Finally, we excluded packing expenses from the calculation of LM's G&A and interest expenses.

2. Test of Home Market Sales Prices. We compared the adjusted weighted-average COP to the third-country market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities[4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the third-country prices, less any applicable movement charges.

3. Results of the COP Test. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' We found that no models of rebar sold by LM failed the 20 percent test and, therefore, we did not disregard any third-country sales in calculating NV.

C. Calculation of Normal Value Based on Third-Country Market Prices

We based third-country market prices on the packed prices to unaffiliated purchasers in Germany. We adjusted the starting price for foreign inland freight and international freight. We made no other adjustments.

We note that LM claimed a credit revenue for sales made to the United States and Germany. In its questionnaire responses, LM characterized this revenue as arising from prepayment made to LM by certain customers. For this preliminary determination, we have not allowed this claimed credit revenue as a circumstance of sale adjustment, as the respondent does not appear to be receiving prepayment from its customers. Instead, the respondent is apparently obtaining funds from banks in order to finance production, and arranging for customers to cancel this obligation directly with the banks after the merchandise is shipped. While the respondent has the use of the money to finance production, it must pay an interest fee to the banks, which offsets any imputed revenue that might arise from such an arrangement. LM has not demonstrated that these fees have been properly reported to the Department. As a result, we have denied the claimed credit revenue for U.S. and third-country sales for purposes of this preliminary determination. We intend to examine this issue further at verification.

D. Level of Trade

LM made only EP sales to the United States. LM's EP and third-country sales were made to trading companies and resellers. In both cases, the selling functions performed by LM for the

[3] Because we have relied on the respondent's own sales data as facts available, it is not necessary to corroborate such information under section 776(c) of the Act.

[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

different customer types and channels of distribution were limited in both markets to price and quantity negotiation, packing, and loading. The selling functions were virtually identical in both markets.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction.[5] The NV level of trade is that of the starting-price sales in the comparison market. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from LM about the marketing stages involved in the reported U.S. and third-country market sales, including a description of the selling activities performed by the respondent for each channel of distribution. In identifying levels of trade for EP and third-country market sales we considered the selling functions reflected in the starting price before any adjustments.

LM reported that its customers in both the United States and Germany were trading companies and resellers. LM further reported that its selling functions in both markets were identical and very limited (primarily to the provision of freight services), and did not include inventory maintenance, technical advice, warranty services, or advertising. Given this, we found a single level of trade for EP sales, and a single, identical level of trade in the comparison market. Therefore no adjustment for level of trade is warranted or granted.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Latvia when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel concrete reinforcing bars from Latvia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a 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)
Liepajas Metalurgs	17.37
All Others	17.37

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV and negative critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for the ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2518 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

[5] As noted above, LM had only EP sales in the United States during the POI.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From Belarus

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Karine Gziryan at (202) 482–5346 or (202) 482–4081, respectively; AD/CVD Enforcement, Office 4, Group II, 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 Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from Belarus are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela*, 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred:

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening material injury or materially injuring a regional industry in the United States producing the domestic like product. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela*, 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, we sent the antidumping questionnaire to the Embassy of the Republic of Belarus with a letter requesting that it forward the questionnaire to all exporters who had shipments of rebar to the United States during the POI.[2] We received responses from one company, Byelorussian Steel Works (BSW). We have reason to believe that this company accounted for all shipments of rebar from Belarus to the United States during the POI. We issued supplemental questionnaires to BSW, where appropriate.

On November 9, 2000, the petitioner requested a postponement of the preliminary determination in this investigation. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine*, 65 FR 69909 (November 21, 2000).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On November 15, 2000, BSW requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. BSW also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI is October 1, 1999, through March 31, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Critical Circumstances

In a letter filed on August 22, 2000, the petitioner alleged that there is a

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[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Belarus. Under section 733(e)(1) of the Act, when critical circumstances allegations are submitted more than 20 days before the scheduled date of the preliminary determination, the Department shall determine on the basis of information available whether there is a reasonable basis to believe or suspect that critical circumstances exist.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent or more during the ''relatively short period'' of time may be considered ''massive.''

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.,* the base period), and three months following the filing of the petition (*i.e.,* the comparison period). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time (*i.e.,* from that time prior to the beginning of the proceeding). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petitioner argues that importers, exporters, or producers of rebar from Belarus had reason to believe that an antidumping proceeding was likely before the filing of the petition. Based upon information contained in the petition, we found that press reports and published statements were sufficient to establish that, by the end of December 1999, importers, exporters, and foreign producers knew or should have known that a proceeding was likely concerning rebar from Belarus. As a result, pursuant to section 351.206(i) of the Department's regulations, the Department has considered whether there have been massive imports after that time based on a comparison of periods immediately preceding and following the end of December 1999 (*i.e.,* April 1999 through December 1999, and January 2000 through September 2000, respectively). *See* Memorandum from Tom Futtner to Holly A. Kuga, Antidumping Duty Investigations of Steel Concrete Reinforcing Bar from Belarus—Preliminary Negative Determination of Critical Circumstances (*Critical Circumstances Preliminary Determination Memorandum*), dated January 16, 2000.

In its critical circumstances allegation, the petitioner also alleges that rebar is a product for which demand is subject to seasonal shifts, and that it is appropriate to use a seasonal methodology to examine whether an import surge occurred with respect to Belarus. We disagree with the petitioner's analysis of massive imports based on seasonality because the evidence on the record does not substantiate that imports of rebar from Belarus are subject to seasonal shifts. *See Critical Circumstances Preliminary Determination Memorandum.*

In order to determine whether imports from Belarus have been massive, the Department requested that BSW, the only Belorussian producer and exporter to the United States of the subject merchandise,[3] provide its shipment data for the last three years. Based on our analysis of the shipment data reported, because imports have decreased during the comparison period, we preliminarily find that the criterion under section 733(e)(1) of the Act has not been met, *i.e.,* there have not been massive imports of rebar from BSW over a relatively short time. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, we preliminarily determine that critical circumstances do not exist for imports of rebar from Belarus.

Non-Market Economy Status for Belarus

In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered a non-market economy (NME) shall remain in effect until revoked. This status covers the geographic area of the former U.S.S.R., each part of which retains the NME status of the former U.S.S.R. Therefore, Belarus will be treated as a NME country unless and until its NME status is revoked (*see Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan,* 57 FR 23380 (June 3, 1992)).

The respondent in this investigation has not requested a revocation of Belarus's NME status. We have, therefore, preliminarily continued to treat Belarus as a NME.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Value section, below.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. BSW has submitted separate rates information in its section A responses, and has requested a separate, company-specific rate. BSW has stated that it is wholly owned by the Ministry of Industry of the Republic of Belarus, but that is not controlled by the Government of the Republic of Belarus.

The Department's separate rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of*

[3] *See* section of this notice on the Belarus-wide rate.

Sales at Less Than Fair Value, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22545 (May 8, 1995).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

In its questionnaire response, BSW asserts that under its Charter, it operates as an independent economic unit with those rights accorded to a legal entity, including the ownership of property, and independent responsibility for its sales. BSW also states that its owner, the Ministry of Industry of the Republic of Belarus, does not control the company's export activities. BSW further claims that there are no licensing requirements, quotas, or any other restrictions or controls by the Government of Belarus on exports of subject merchandise to the United States or any other destination.

However, despite requests by the Department in its original and supplemental questionnaires, BSW did not place on the record any legislative enactments or other formal measures by the Government of the Republic of Belarus that support its claims, and that demonstrate the absence of de jure control. While BSW's Charter may provide for the company to operate independently in some respects, the Charter (which BSW placed on the record) is subject to the laws of Belarus (which BSW did not submit), and does not by itself prove the absence of de jure control. Therefore, without any documentary proof of the absence of de jure control, BSW has not overcome the presumption of de jure control.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

BSW reports that it has authority to negotiate and sign contracts, and claims that no organization outside BSW reviews or approves any aspect of BSW's export sales transactions. In addition, the submitted sales documentation shows no government involvement in setting export prices. In regard to management selection, BSW states that the Ministry of Industry of the Republic of Belarus appoints the Directors of BSW. Then, in consultation with the General Director of BSW, the Directors appoint the management of BSW. BSW notes that the General Director also must notify the Government of any change in the position of Chief Engineer, the second most senior position in the company.

In regard to export revenue and profits, BSW reports that it has no restrictions on the use of its export revenue, but states that by special decrees of the Republic of Belarus, it is required to sell a certain percentage of its export revenue. BSW also claims that the management of BSW is solely responsible for the disposition of profits. However, proprietary documents on the record of this investigation indicate that the Ministry of Industry of the Republic of Belarus influences the allocation of BSW's profit.

While the record evidence indicates that BSW sets its own export prices and has the authority to negotiate and sign contracts, it appears that BSW does not have autonomy from the government in selecting its management: BSW's Directors, appointees of the Ministry of Industry, select the management. Furthermore, BSW does not have complete operational control over either the proceeds of its export sales or its profits. Other record evidence, including BSW's Charter, indicates that in general, BSW's relevant activities are under the jurisdiction of its owner, the Ministry of Industry of the Republic of Belarus. In view of BSW's relationship with the Ministry of Industry of the Republic of Belarus, BSW has not overcome the presumption of de facto government control. Due to the proprietary nature of these issues, for further details, *see* Memorandum on Whether to Grant BSW a Separate Rate dated January 16, 2001.

The failure to demonstrate either the absence of de jure or de facto control makes an exporter ineligible for a separate rate. In this case, we have preliminarily determined that BSW has failed to demonstrate the absence of both de jure and de facto control. Therefore, the Department preliminarily determines that BSW is not eligible to receive a separate rate.

The Belarus-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. Information on the record of this investigation indicates that BSW was the only Belorussian producer and exporter to sell the subject merchandise to the United States during the POI. Since the only Belorussian producer and exporter of the subject merchandise responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI, we calculated a Belarus-wide rate based on the weighted-average margin determined for BSW.

Fair Value Comparisons

To determine whether sales of rebar from Belarus were made in the United States at less than fair value, we compared export price (EP) to a NV calculated using our NME methodology, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because the merchandise was sold, prior to importation, by BSW to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record. At the time of sale, BSW knew that its reported sales of the subject merchandise were destined for the United States.

We calculated EP based on the packed, delivered-at-frontier (DAF) and free-carrier (FCA) prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the factory to the frontier. Because inland freight was provided by NME companies, we based freight charges on surrogate freight rates from Thailand (see the Normal Value section for further discussion).

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that Colombia, Ecuador, Namibia, South Africa, and Thailand were the countries most comparable to Belarus in terms of overall economic development (*see* the August 31, 2000, memorandum, *Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from Belarus: Nonmarket Economy Status and Surrogate Country Selection*).

Because of a lack of necessary factor price information from the other potential surrogate countries that are significant producers of products comparable to the subject merchandise, we have relied, where possible, on information from Thailand, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated NV by applying Thai values to BSW's factors of production. *See Factors of Production Valuation Memorandum*, dated January 16, 2001 (*Surrogate Value Memorandum*).

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by BSW for the POI. To calculate NV, we multiplied the reported per-unit quantities by publicly available surrogate values from Thailand.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost using the reported distance from the domestic supplier to the factory where this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Where a producer did not report the distance between the domestic supplier and the factory, we used as facts available the longest distance reported, *i.e.*, the distance from the nearest seaport to the factory. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (including steel scrap, ferroalloys, lime, limestone, coke, dolomite, haydite, fluorspar, wire with silicon calcium powder, electrodes, nitrogen, oxygen, argon, wire, and labels) using values from the appropriate Harmonized Tariff Schedule (HTS) number, from 1997, 1998, and 1999 Thai imports statistics reported in the United Nations Commodity Trade Statistics. Where a material input was purchased in a market-economy currency from an unaffiliated market-economy supplier, we valued such material input at the actual purchase price in accordance with section 351.408 (c)(1) of the Department's regulations. For a complete analysis of surrogate values, *see Surrogate Value Memorandum.*

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 Thai electricity rates, as adjusted, reported in the publication Energy Prices and Taxes, fourth quarter 1999. We based the value of natural gas on 1993 Thai prices reported in Coal and Natural Gas Competition in APEC Economies, published by the Asian Institute of Technology in August 1999.

We based our calculation of selling, general and administrative (SG&A) expenses, overhead, and profit on the 1999 financial statement of Sahaviriya Steel Industries Public Company Limited (Sahaviriya), a Thai producer of steel products comparable to the subject merchandise. Although Sahaviriya does not produce rebar, we used Sahaviriya's statement because Sahaviriya is a Thai producer of comparable steel products, and we could not locate a financial statement of a Thai rebar producer from which we could calculate a positive amount of profit. We only included depreciation in our overhead calculation because Sahaviriya's financial statement does not separately list other factory overhead expenses.

To value railway freight rates, we used a November 1999 rate from the State Railway of Thailand.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Belarus when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the date of publication of the preliminary LTFV determination.

Suspension of Liquidation

We are directing the Customs Service to suspend liquidation of any entries of rebar from Belarus entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter (percent)	Margin (percent)
Belarus-Wide Rate	73.98

The Belarus-wide rate applies to all entries of the subject merchandise from Belarus.

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our affirmative sales at less than fair value and negative critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury, to the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all the cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2519 Filed 1–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–841–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Moldova

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan or Michele Mire at (202) 482–5253 or (202) 482–4711, respectively; AD/CVD Enforcement, Office 4, Group II, 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 Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from Moldova are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela*, 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela*, 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, we sent the antidumping questionnaire to the Embassy of the Republic of Moldova with a letter requesting that it forward the questionnaire to all exporters who had shipments of rebar to the United States during the POI.[2] We received responses from one company, Moldova Steel Works (MSW). We have reason to believe that MSW is the only exporter to the United States during the POI. We

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

issued several supplemental questionnaires to MSW, as appropriate.

On August 18, 2000, in the Department's original questionnaire, we requested MSW to provide copies of legislation and other documentation to substantiate its claim for a separate rate. On September 22, 2000, MSW responded to the Department's original Section A questionnaire and claimed that the company was located in the ''Transdniestrian region of Moldova'' (TMR).[3] Accordingly, MSW stated that any discussion regarding separate rates or copies of documentation and legislation would concern only the relationship between ''TMR'' and MSW. Currently, the United States Government does not recognize the ''TMR'' as a separate political state. On October 3, 2000, the Department, issued a supplemental questionnaire, requesting that MSW provide complete answers to the separate rates section of the questionnaire as it relates to the Republic of Moldova. On October 20, 2000, MSW responded, claiming that it is not under the jurisdiction of the Republic of Moldova and would therefore only provide information as it related to ''TMR.'' Finally, on October 31, 2000, the Department issued a second supplemental section A questionnaire, requesting MSW to provide copies of documentation and other supporting evidence for its claim for a separate rate, its claim for treating U.S. sales as export price (EP) transactions, and supporting discussions on several issues regarding affiliations with its customers. This second supplemental questionnaire was issued by the Department due to MSW's failure to respond to several questions in its October 20, 2000 response on these same issues. A response to the second supplemental questionnaire was filed on November 8, 2000.

During the course of this proceeding, MSW requested, and the Department granted, several extensions to enable MSW to respond to the Department's questions. The issues of primary importance in this investigation are separate rates, the proper universe of U.S. sales, and any potential affiliations with customers. These topics were addressed in the Department's original, first supplemental section A, and second supplemental section A questionnaires. We note that at each stage of the process, MSW failed to provide the requested information even after receiving extensions from the Department. For example, with regard to translations and discussions of legislation issued by the Government of Moldova and ''TMR,'' the Department made multiple requests for information. However, as evidenced by the submissions on the record, MSW repeatedly filed responses stating that it would provide the requested information at some undisclosed future date. Finally, after numerous requests, MSW filed translated copies of the requested legislation on November 22, 2000, nearly three months after these documents were initially requested in the Department's original questionnaire. Nonetheless, recognizing MSW's attempts to respond to the Department's information requests, and in light of its claimed unique difficulties, we believe that it is appropriate to use the information placed on the record for this preliminary determination, subject to verification.

In a letter filed on August 22, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Moldova. On November 27, 2000, the Department preliminarily determined that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of rebar from Moldova. *See Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars from Ukraine and Moldova*, 65 FR 70696 (November 27, 2000).

On October 13, 2000, in a cover letter accompanying its unsolicited market economy Section B and C response, MSW requested that the Department find the concrete reinforcing bar industry in Moldova to be a market-oriented industry (MOI), but failed to provide a market economy section A response. The petitioner submitted comments to the Department on October 18, 2000, objecting to the MOI claim made by the responding company on the grounds that neither the Republic of Moldova nor ''TMR'' can be described as operating under market principles. Subsequently, the Department issued a supplemental questionnaire to MSW on October 20, 2000, requesting any additional information relevant to the MOI request, including a request for a market economy section A response. On November 8, 2000, we received responses from MSW providing documentation which it claimed supported its MOI claim, but in essence merely referred the Department to MSW's September 23, 2000, October 20, 2000, and November 8, 2000 responses to the non-market economy section A questionnaire.

On October 27, 2000, the Department issued its supplemental section C and D questionnaire, requesting MSW to provide information to substantiate its claims for date of sale, affiliation issues, and also to provide a complete list of all the factors of production which MSW had omitted in its original Section C and D responses filed on October 13, 2000. The response to this supplemental questionnaire was received on November 3, 2000.

On November 3, 2000, the petitioner alleged, in conjunction with MSW's MOI request, that MSW's sales were sold below the cost of production. Pending the Department's determination with respect to MSW's MOI request, the Department initiated a sales-below cost investigation on November 7, 2000, and issued a section D questionnaire to MSW. Responses to this questionnaire were submitted on December 6, 2000, after the Department granted MSW's request for an extension.

On November 9, 2000, the Department received a timely request for postponement of the preliminary determination from the petitioner in accordance with 19 CFR 351.205(e). The Department postponed the preliminary determination, pursuant to section 733(c)(1)(A) of the Act, until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, and Ukraine*, 65 FR 69909 (November 21, 2000).

Period of Investigation

The POI is October 1, 1999, through March 31, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

[3] Although Moldova became independent in 1991, the population east of the Dniester river has proclaimed a ''Transdniestrian'' republic, referred to in this case as ''TMR.'' *See* CIA World Factbook, Moldova. The United States Government does not recognize ''TMR'' as a legitimate governmental body, *i.e.,* ''country'' within the meaning of section 773(c)(1)(A) of the Act. The United States only recognizes the Republic of Moldova as an independent political entity.

Critical Circumstances

On August 22, 2000, the petitioner alleged that critical circumstances exist with respect to imports of rebar from Moldova. On November 27, 2000, the Department preliminary determined that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of rebar from Moldova. *See Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000) (*Critical Circumstances Notice*).

Non-Market Economy Status for Moldova

In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered a non-market economy (NME) shall remain in effect until revoked. This status covers the geographic area of the former Union of Soviet Socialist Republics (U.S.S.R.), each part of which retains the NME status of the former U.S.S.R. Therefore, Moldova will be treated as an NME unless and until its NME status is revoked by the Department. *See Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380 (June 3, 1992).

The respondent in this investigation has not requested a revocation of Moldova's NME status. We have, therefore, preliminarily continued to treat Moldova as a NME country.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Value section below.

Market Oriented Industry

As indicated above, the single Moldovan producer, MSW, requested that the Department find the concrete reinforcing bar industry in Moldova to be a MOI. We note at the outset that MSW did not request MOI status until October 13, 2000, well after our NME questionnaires were issued, leaving the Department little time to conduct its analysis. Nevertheless, the Department issued a supplemental questionnaire regarding information relevant to the MOI request on October 20, 2000. This supplemental questionnaire requested that MSW address the criteria for determining whether an MOI exists. Specifically, this questionnaire requested MSW to provide information regarding the level of governmental involvement in setting prices and production quantities, and the relationship between MSW and its owners; to describe the ownership structure of the rebar industry; and to demonstrate that market determined prices are paid for all significant inputs used in the production process. Furthermore, the Department sought clarifying information with regard to MSW's responses to section B and C of the Department's market economy questionnaire (including discussions on the proper comparison market), and requested that MSW respond to a market economy section A questionnaire to address concerns regarding affiliation, ownership, and distribution systems. On November 8, 2000, MSW responded to the Department's questionnaire by providing generic statements and cross-references to prior submissions, which the Department had separately found to be deficient. Nevertheless, the Department undertook an examination of the information placed on the record.

The criteria for determining whether a MOI exists are: (1) Virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under review should be characterized by private or collective ownership; and (3) market determined prices must be paid for all significant inputs, whether material or non-material, and for all but an insignificant portion of all inputs accounting for the total value of the merchandise. *See Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Administrative Review*, 61 FR 58514, 58516 (November 15, 1996) (*Lug Nuts*). In addition, in order to make an affirmative determination that an industry in a NME country is a MOI, the Department requires information on virtually the entire industry. *See Freshwater Crawfish Tailmeat from the People's Republic of China, Final Determination of Sales at Less than Fair Value*, 62 FR 41347, 41353 (August 1, 1997) (*Crawfish*). A MOI claim, and supporting evidence, must cover producers that collectively constitute the industry in question; otherwise, the MOI claim is dismissed. *See id.*

We preliminarily find in this investigation that the Moldovan rebar industry does not meet the Department's criteria for an affirmative MOI finding. As noted above, MSW responded to the Department's supplemental MOI questionnaire by providing generic statements and cross-references to prior submissions, which the Department had separately found to be deficient. For example, MSW responded with the same unsupported assertion from its section A response that the ''TMR'' does not exercise control over its use and acquisition of capital. Therefore, applying the facts before us with respect to the first two criteria listed above, and based upon an examination of the information submitted on the record by MSW, we find that there is insufficient evidence to determine that: (1) There is virtually no government involvement in setting prices or amounts to be produced; and (2) the industry under review is characterized by private or collective ownership. With regard to the third factor, the record evidence demonstrates that market-determined prices are not paid for all significant inputs, whether material or non-material. In fact, Exhibit 3 of MSW's October 13, 2000 Section D response, and page 33 of MSW's November 3, 2000 supplemental response, demonstrate that only a few minor inputs were purchased from market economy suppliers and paid for in market economy currencies. Thus, the information on the record of this investigation does not support Moldova's claim that its rebar industry is a MOI. Therefore, we preliminarily determine that the Moldovan rebar industry does not meet the criteria for an affirmative MOI finding.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. MSW has submitted separate rates information in its section A responses, and has requested a separate, company-specific rate. MSW has stated that it is partially owned by the ''State Property Committee of TMR,'' [4] but claimed that this entity is neither associated with, nor endorsed by, the Government of the Republic of Moldova. Despite the Department's requests for documents discussing the relationship between

[4] MSW made references in its responses to the ''State Property Committee of TMR,'' the ''State Committee on Property of TMR,'' and the ''State Committee of Property of TMR.'' As these three names are almost identical, we believe that these names all refer to the same entity. For the purposes of this notice, we will use a single name, the ''State Property Committee of TMR,'' in place of the three names that MSW used in its responses to refer to this entity.

MSW and the Republic of Moldova, MSW only provided copies of legislative enactments and other supporting documentation discussing the relationship between MSW and the ''TMR,'' an entity not recognized by the United States as a ''country'' within the meaning of section 773(c)(1)(A) of the Act. *See Case History* section above for a full discussion. We note that, although the United States does not recognize ''TMR'' as a country, even if the Department were to entertain, arguendo, MSW's analysis of its relationship to ''TMR'' under section 773(c) of the Act, the information provided does not support MSW's claim. An examination of the submitted documents alleged to establish the independence of MSW from the ''TMR'' reveals that MSW has failed to provide sufficient documentation to support its claim for a separate rate. Consequently, as discussed in detail below, we preliminarily determine, based on the facts on the record, that MSW has failed to meet the separate rates test both in relation to the Government of Moldova, as well as the ''TMR.''

The Department's separate rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725, 14728 (March 20, 1995).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20585–87 (May 6, 1991), and amplified in *Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China*, 59 FR 22588 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. See *Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22545 (May 8, 1995).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

During the course of this investigation, MSW has failed to provide any legislation or other documentation issued by the Republic of Moldova regarding the absence of de jure control. For purposes of this investigation, we preliminarily determine that MSW has not provided sufficient documentary proof of the absence of de jure control by the Republic of Moldova. As a consequence, we find that MSW fails to overcome the presumption of de jure control.

Although the Republic of Moldova is the only country recognized by the United States for the purposes of this investigation, for the sake of argument we have addressed MSW's claims with respect to ''TMR.'' Given the fact that MSW only provided documentation regarding its relationship with the ''State Property Committee of TMR,'' the Department examined this information to determine the extent to which there is any governmental control, regional or otherwise, over the operations of MSW. MSW asserts in its questionnaire response that under its Charter, it operates as an independent economic unit with those rights accorded to a legal entity, including the ownership of property. MSW claims that it bears independent responsibility for its sales and that the ''State Property Committee of TMR,'' does not control the company's export activities. MSW also claims that there are no licensing requirements, quotas, or any other restrictions or controls by the ''TMR'' on exports of subject merchandise to the United States or any other destination.

Despite having made such claims, and despite several requests by the Department, MSW failed to submit adequate translations and original language copies of the legislation of the ''TMR.'' MSW provided the Department with a copy of its Charter, but since this document is neither a formal measure by the Government of the Republic of Moldova nor ''TMR,'' its provisions are not dispositive in the de jure analysis. Therefore, without any documentary proof of the absence of de jure control, we preliminarily determine that MSW has failed to overcome the presumption of de jure control.

2. Absence of De Facto Control

Having failed to overcome the presumption of de jure control, the Department need not address MSW's claim that it is not de facto controlled by either the Republic of Moldova or the ''TMR.'' However, we note that the information supplied would also be insufficient to establish an absence of de facto control as discussed below.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In its responses, MSW failed to discuss the extent, if any, to which the Republic of Moldova exercised de facto control over its export functions. As such, the Department was prevented from conducting a thorough analysis of the four afore-mentioned factors regarding the absence of de facto control by the Government of Moldova. In view of MSW's failure to provide documentation regarding its relationship with the Government of the Republic of Moldova, MSW fails to overcome the presumption of de facto governmental control.

MSW did provide certain information in relation to the de facto control by the ''TMR,'' which, as discussed above, we are addressing solely for the sake of argument. MSW reported that it has authority to negotiate and sign contracts without express ''TMR'' approval, and claimed that no organization outside MSW reviews or approves any aspect of MSW's export sales transactions. In addition, although MSW failed to discuss the Republic of Moldova's control over MSW's export functions, the submitted sales documentation showed no involvement by either the Government of Moldova or ''TMR'' in setting export prices.

In regards to management selection, MSW stated that the shareholders of MSW elect the Board of Directors which in turn elects the Governing Board (*i.e.*, the company management). The documentation on the record did not reference the Government of Moldova, but indicated that the ''State Property Committee of TMR'' is a shareholder that exercises veto power over several aspects of the operational control of MSW. This includes the power to veto any ventures, associations, and agreements entered into by MSW for export sales.

In regards to export revenue and profits, MSW reported that it has no internal restrictions on the use of its export revenue, but stated that by special decrees of the ''TMR,'' it is required to sell a certain percentage of its export revenue.

In addition, MSW further claimed that the management of MSW is solely responsible for the disposition of the profits. However, MSW's Charter indicates that the ''State Property Committee of TMR'' influences the allocation of MSW's profit.

While the record evidence indicates that MSW sets its own export prices and has the authority to negotiate and sign contracts, it appears that, assuming the validity of the regional entity ''TMR,'' MSW does not have autonomy from the ''State Property Committee of TMR'' in selecting its management, since the regional ''State Property Committee of TMR'' assists in appointing MSW's Directors, who in turn select the management. In addition, MSW does not have complete operational control over either the proceeds of its export sales or its profits.

Furthermore, other record evidence, including MSW's Charter, indicates that in general, MSW is under the jurisdiction of the ''State Property Committee of TMR.'' In view of MSW's failure to provide documentation regarding its relationship with the Government of the Republic of Moldova, MSW fails to overcome the presumption of *de facto* governmental control. Moreover, even if ''TMR'' were a recognized government, MSW's numerous ties to the ''State Property Committee of TMR'' would justify a finding of *de facto* government control.

The failure to demonstrate either the absence of *de jure* or *de facto* control makes an exporter ineligible for a separate rate. In this case, we have preliminary determined that MSW has failed to demonstrate the absence of both *de jure* and *de facto* control. Therefore, the Department preliminarily determines that MSW is not eligible to receive a separate rate.

The Moldova-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. Information on the record of this investigation indicates that MSW was the only Moldovan producer and exporter to sell the subject merchandise to the United States during the POI. Since the only Moldovan producer and exporter of the subject merchandise responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI, we calculated a Moldova-wide rate based on the weighted-average margin determined for MSW.

Fair Value Comparisons

To determine whether sales of rebar from Moldova were made in the United States at less than fair value, we compared export price (EP) to a normal value (NV) calculated using our NME methodology, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because the merchandise was sold, prior to importation, by MSW to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record. At the time of sale, MSW knew that its reported sales of the subject merchandise were destined for the United States.

We calculated EP based on the freight-on-board (FOB) prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the factory to the port of export and domestic brokerage and handling expenses. Because inland freight and brokerage and handling services were provided by NME companies, we based freight and brokerage charges on surrogate freight and brokerage rates from India. *See* Normal Value section for further discussion.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, and Sri Lanka were the countries most comparable to Moldova in terms of overall economic development. *See* the memorandum regarding *Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from Moldova: Nonmarket Economy Status and Surrogate Country Selection,* dated August 31, 2000.

Furthermore, the Department determined, based on information derived from publicly available sources, that India is a significant producer of products comparable to the subject merchandise. Therefore, we have relied, where possible, on information from India, and calculated NV by applying Indian values to virtually all of MSW's factors of production. Where no Indian values were available, we used information from Indonesia, the second-most complete source of information from among the potential surrogate countries. *See Surrogate Value Memorandum,* dated January 16, 2001.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production (*e.g.* steel scrap, ferroalloys, labor, energy, and packing materials) reported by MSW for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available surrogate values from India, and where necessary, from Indonesia.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we include freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values of inputs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408–11 (Fed. Cir. 1997). Where MSW did not report the distance between the material supplier and the factory, we used, as

facts available, the longest distance reported, *i.e.,* the distance between the port of export and the factory. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (*i.e.,* metal scrap, ferromanganese, silicomanganese, ferrosilicon, lime, limestone, coke, aluminum powder, aluminum, electrodes, wire rod, paint, etc.) using values from the appropriate Harmonized Tariff Schedule (HTS) number, from imports statistics reported in the *Monthly Statistics on Foreign Trade for India* for the partial year 1998, or in the TradeStat Web data for the period October 1999 to March 2000. For a complete analysis of surrogate values, *see Surrogate Value Memorandum.*

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 electricity rates, as adjusted, for India reported in the publication *Energy Prices and Taxes,* fourth quarter 1999. We based the value of natural gas on the value calculated in the final determination of Polyvinyl Alcohol from the People's Republic of China. Finally we valued oxygen, nitrogen, and argon on the import statistics reported in the *Monthly Statistics of Foreign Trade for India* for the partial year 1998.

We based our calculation of factory overhead and selling, general and administrative (SG&A) expenses, and profit on the 1999–2000 financial statement of TATA Steel Company, an Indian producer of products comparable to the subject merchandise.

To value railway freight rates, we used a 1998 rate provided by the Indian Railway Conference Association. For truck transportation, we valued truck rates using information from a prior investigation, as adjusted for inflation. *See Surrogate Value Memorandum.*

For each of the material inputs, energy, and transportation surrogate values selected for use in the Department's calculation, we inflated the values using appropriate inflators when these values were not from a period concurrent with the POI. *See Surrogate Value Memorandum.*

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Moldova when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the date of publication of the preliminary LTFV determination.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing the Customs Service to suspend liquidation of all entries of rebar from Moldova entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. *See Critical Circumstances Notice,* dated November 27, 2000. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Moldova-Wide Rate	277.62

The Moldova-wide rate applies to all entries of the subject merchandise from Moldova.

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our affirmative sales at LTFV and critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury, to the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than seven days after the issuance of the verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, it would be appreciated if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all the cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2520 Filed 1–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–860]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggle at (202) 482–4162 or (202) 482–0650, respectively; AD/CVD Enforcement, Office 5, Group II, 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 Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bar (rebar) from the People's Republic of China (PRC) is being sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

In the petition, filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from the PRC. On August 30, 2000, the Department preliminarily determined that critical circumstances exist with respect to exports of rebar from the PRC. *See Memorandum to Holly A. Kuga Re: Preliminary Affirmative Determinations of Critical Circumstances* (August 30, 2000); *see also Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From the People's Republic of China and Poland,* 65 FR 54228 (September 7, 2000).

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, we issued the antidumping questionnaire to the Chinese Ministry of Foreign Trade & Economic Cooperation (MOFTEC) with a letter requesting that it forward the questionnaire to all exporters of rebar who had shipments during the POI.[2] In addition, on August 18, 2000, we sent the questionnaire to the Chinese exporter/producer Laiwu Steel Group, Ltd. (Laiwu), which had contacted us through counsel, with instructions to complete and return the questionnaire by the given deadline. We received a response only from Laiwu. Subsequently, we issued supplemental questionnaires to, and received responses from Laiwu.

On September 13, 2000, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from the petitioner between October 16 and November 13, 2000, and from Laiwu on October 23, 2000.

On November 9, 2000, the petitioner requested a postponement of the preliminary determination in this investigation. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine,* 65 FR 69909 (November 21, 2000).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 28, 2000, Laiwu requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. In its request, Laiwu also requested that the Department extend by 60 days the application of the provisional measures prescribed under paragraphs (1) and (2) of section 773(d) of the Act. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is October 1, 1999, through March 31, 2000. This period

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Non-market Economy Status for the People's Republic of China

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China,* 65 FR 19873 (April 13, 2000). A designation as a NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The respondent in this investigation has not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as a NME. When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Value section, below.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Laiwu, the only responding company that has submitted a questionnaire response, has provided the requested company-specific separate rates information and has stated that there is no element of government ownership or control. In its questionnaire response, Laiwu states that it is an independent company ''owned by all the people'' and controlled by the general assembly of workers and employees. Laiwu further claims that it does not maintain any corporate relationship with the central, provincial, and local government in terms of production, management, and operations. As stated in the *Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*), and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol,* 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by ''all the people'' does not require the application of a single rate. The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), and amplified in *Silicon Carbide.* Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol.*

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Laiwu has placed on the record a number of documents to demonstrate absence of de jure control, including the ''Foreign Trade Law of the People's Republic of China,'' promulgated on May 12, 1994, the ''Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People,'' adopted on April 13, 1988, and the ''Regulations for Transformation of Operational Mechanism of State-Owned Enterprises,'' effective as of July 23, 1992. In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472 (October 24, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

As stated in previous cases, there is some evidence that the provisions of the above-cited 1988 Law and 1992 Regulations regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC, (*see* ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Laiwu asserted the following: (1) It establishes its own export prices independently of the government and without the approval of a government authority; (2) it negotiates contracts, without guidance from any

governmental entities or organizations; (3) it makes its own personnel decisions including the selection of management; and (4) it retains the proceeds of its export sales, and utilizes profits according to its business needs.

Based on the information provided, we preliminarily determine that Laiwu has met the criteria for the application of separate rates. We will examine this matter further at verification.

Since Laiwu is the only responding producer/exporter, we preliminarily determine, as facts available, that all other non-responsive producers/exporters have not met the criteria for application of separate rates.

The People's Republic of China-Wide Rate and Use of Facts Otherwise Available

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received a timely response from only Laiwu, for which we have calculated a company-specific rate. Our review of U.S. import statistics from the PRC, however, reveals that Laiwu did not account for all imports into the United States from the PRC. For this reason, we preliminarily determine that some PRC exporters of steel concrete reinforcing bars failed to respond to our questionnaire. In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation; or (2) the margin calculated for Laiwu (*see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China* 64 FR 34660 (May 31, 2000). In this case, the preliminary adverse facts available margin is 59.98 percent, which is the highest margin stated in the notice of initiation.

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petitions for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petitions. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the (EP) and normal value (NV) calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petitions has probative value, as certain information included in the margin calculations in the petitions is from public sources concurrent, for the most part, with the POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the January 16, 2001, memoranda to the file regarding *Corroboration of the Petition Data for the People's Republic of China* on file in the Central Records Unit, Room B–099, of the Main Commerce Department building).

Fair Value Comparisons

To determine whether sales of rebar from the PRC were made in the United States at less than fair value, we compared export price (EP) to NV based on a NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because Laiwu sold the subject merchandise directly to unaffiliated customers in the United States prior to importation, and constructed export price (CEP) methodology was not otherwise appropriate. We calculated EP based on packed free-on-board (FOB) or, where appropriate, cost and freight (C&F) prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of embarkation, insurance, brokerage and handling in China, ocean freight and marine insurance. Because certain domestic charges such as those for inland freight, insurance, brokerage and handling, and ocean freight were provided by NME companies, we based those charges on surrogate rates from India. (*See Memorandum from the Team to the File,* dated January 16, 2001 (*Surrogate Value Memorandum*).)

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, Sri Lanka, and Philippines were the countries most comparable to the PRC in terms of overall economic development (*see* the August 31, 2000, memorandum, *Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection*).

Because of a lack of the necessary factor price information from the other potential surrogate countries that are significant producers of comparable products to the subject merchandise, we have relied, where possible, on information from India, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated NV by applying Indian values to Laiwu's factors of production for virtually all factors. *See Surrogate Value Memorandum.*

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Laiwu for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir.

1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported, *i.e.,* the distance between the PRC seaport and the producer's location. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (*e.g.,* where appropriate, coal, iron ore, limestone, white ash, permanganese, aluminum manganese, ferro-silicon, silico-calcium, aluminum, steel strip, and wire rod) by Harmonized Tariff Schedule (HTS) number, using primarily imports statistics from the Monthly Statistics of the Foreign Trade of India and the United Nations Commodity Trade Statistics. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued such a material input at the actual purchase price in accordance with section 351.408 (c)(1) of the Department's regulations.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 electricity rates, as adjusted for inflation, for India as reported in the publication Energy Prices and Taxes, 4th quarter 1999.

We based our calculation of factory overhead, selling, general and administrative (SG&A) expenses, and profit on the 1999/2000 financial statements of The TATA Iron and Steel Company Limited, an Indian producer of products comparable to the subject merchandise.

To value truck freight rates, we used freight costs based on price quotes obtained by the Department in November 1999 from trucking companies in India. For rail transportation, we valued rail rates using information published by the Indian Railway Conference Association in June 1998, as adjusted for inflation.

For brokerage and handling, we used the recent publicly available source which is the public version of a U.S. sales listing reported in the questionnaire response submitted by Viraj Impoexpo in the *New Shipper Review of Stainless Steel Wire Rod from India*, 63 FR 48184 (September 9, 1998).

For a complete analysis of surrogate values, see *Surrogate Value Memorandum.*

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances findings, we are directing the Customs Service to suspend liquidation of all unliquidated entries of rebar from the PRC entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Laiwu Steel Group, Ltd	20.89
PRC-Wide Rate	59.98

The China-wide rate applies to all entries of the subject merchandise except for entries from the exporter/factory that is identified above.

Disclosure

The Department will disclose calculations performed within five days of this determination to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV and our affirmative critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all the cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination for the PRC will be issued no later than 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2521 Filed 1–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–455–803; A–560–811; A–823–809]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Poland, Indonesia, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis at (202) 482–2336 (for Poland), Maisha Cryor at (202) 482–5831 (for Indonesia), or Keir Whitson at (202) 482–1777 (for Ukraine), AD/CVD Enforcement, 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 Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determinations

We preliminarily determine that steel concrete reinforcing bars (rebar) from Poland, Indonesia, and Ukraine are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

These investigations were initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of the investigations, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, the Department issued complete antidumping questionnaires to all known producers/exporters of subject merchandise in Poland and Ukraine.[2] In the case of Indonesia, the complete antidumping questionnaire was issued to PT The Master Steel Manufacturing Co.[3] (Master Steel), and partial Section A questionnaires[4] were issued to several additional Indonesian steel companies in order to gather adequate quantity and value information to make a respondent selection determination in that investigation. For a further discussion of the respondent selection process for Indonesia, *see* the Indonesia section, below.

In the petition, filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Poland.

On August 30, 2000, the Department preliminarily determined that critical circumstances exist with respect to exports of rebar from Poland. *See Memorandum to Holly A. Kuga Re: Preliminary Affirmative Determinations of Critical Circumstances* (August 30, 2000); *see also Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From the People's Republic of China and Poland,* 65 FR 54228 (September 7, 2000).

In a letter filed on August 22, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Ukraine. On November 27, 2000, the Department preliminarily determined that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of rebar from Ukraine. *See Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova,* 65 FR 70696 (November 27, 2000).

On November 9, 2000, the petitioner requested a postponement of the preliminary determinations in these investigations. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determinations until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine,* 65 FR 69909 (November 21, 2000).

Period of Investigations

For Poland and Indonesia, the POI is April 1, 1999, through March 31, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000). Because Ukraine is a non-market economy, the POI for Ukraine corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition; namely, October 1, 1999 through March 31, 2000.

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Because the Department considers Ukraine to be a non-market economy, and because the number of producers/exporters identified in Ukraine did not appear to preclude an examination of each exporter and that exporter's suppliers, we determined to examine all exports to the United States from Ukraine in accordance with our general practice. *See Memorandum to Holly A. Kuga Re: Selection of Respondents* (August 25, 2000). In the case of Poland, a market economy, we found that only one producer in Poland exported subject merchandise to the United States during the POI. We therefore determined to examine all exports from Poland during the POI, in accordance with our general practice. *Id.*

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

[4] The partial Section A questionnaire requests information on the quantity and value of home and U.S. market sales.

Scope of Investigations

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

Poland

In accordance with section 776(a)(2), 776(b), and 782(d) and (e) of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Huta Ostrowiec S.A. and Stalexport (collectively, Stalexport).

On August 18, 2000, the Department issued an antidumping questionnaire to Stalexport. On October 6, 2000, we received a section A questionnaire response from Stalexport, and on October 10, 2000, we received the responses to sections B through D of our questionnaire. We reviewed these initial responses and found that a substantial portion of the sales in Stalexport's home market sales listing were sales to an affiliated reseller, rather than the resales to the first unaffiliated customer. This resulted not only in an incomplete and unreliable home market sales listing, but also in an inaccurate total quantity and value for Stalexport's POI sales. In order to address this and other deficiencies, we issued a supplemental section A questionnaire on October 6, 2000. The response was initially due on October 20, 2000. However, Stalexport never retrieved the supplemental questionnaire from our courier office. Therefore, we re-issued the supplemental section A questionnaire on October 25, 2000, along with supplemental section B and section C questionnaires. This gave Stalexport an additional eighteen days to complete its response to section A, *i.e.,* until November 7, 2000, and until November 13, 2000, to respond to supplemental section B and section C questionnaires. We also issued a supplemental section D questionnaire on October 27, 2000, with a response due date of November 9, 2000.

Although we provided Stalexport with additional time to complete the supplemental section A questionnaire, the company did not submit a response. Stalexport also did not respond to the section B, C or D supplementals by the respective due dates, nor did the company request that the Department grant any extension of the deadline to respond. On November 9, 2000, we phoned counsel for Stalexport to inquire as to whether the respondent was aware that the deadlines for responding to the supplemental questionnaire responses had passed. Counsel for Stalexport indicated that he was indeed aware that the deadline had passed, and offered no explanation for Stalexport's failure to meet the response deadline. *See Memorandum to the File from Charles Riggle,* dated November 13, 2000.

As described above, Stalexport failed to provide, within the applicable deadlines, its responses to the Department's supplemental questionnaires. Despite the Department's repeated attempts, pursuant to section 782(d) of the Act, to obtain, inter alia, Stalexport's unreported sales by its affiliated resellers, Stalexport failed to respond. In addition, without the supplemental questionnaire responses, we are unable to determine the extent of unreported home market sales, whether Stalexport provided the appropriate date of sale for the sales that it did report, and whether Stalexport's home market and U.S. sales are reported on an equivalent weight basis for comparison purposes. As a result, we do not have a reliable home market listing to use for comparison purposes in accordance with our general practice, nor are we able to confirm the appropriate date of sale for any of the submitted sales.

We further find that the application of section 782(e) of the Act, we are unable to use the company-specific information contained in the responses we did receive, given that the deadline for submitting the necessary information has passed, and the responses currently on the record are so incomplete that they cannot serve as a reliable basis for reaching the applicable determination. *See* sections 782(e)(1), (3) and (4) of the Act. We further note that Stalexport did not notify the Department that it would be unable to submit the requested information, nor did it provide any explanation or propose an alternate form of submitting the required data, pursuant to section 782(c)(1) of the Act. Because the information that Stalexport failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary determination, pursuant to section 776(a)(2)(A), (B) and (C).

We also find that the application of an adverse inference in this case is appropriate, pursuant to section 776(b) of the Act. As discussed above, Stalexport failed to provide the critical data pertaining to the company's affiliated party transactions and date of sale, despite the Department's clear directions in both the original and supplemental questionnaires and numerous conversations with the company's counsel. Furthermore, Stalexport made no effort to provide any explanation or propose an alternate form of submitting the required data. For these reasons, we find that Stalexport did not act to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from*

Japan, 65FR42985 (July 12, 2000) (the Department applied total adverse facts available where respondent failed to respond to the antidumping questionnaires).

Indonesia

In accordance with section 776 of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Indonesia. The Department issued partial section A antidumping duty questionnaires (partial A questionnaires) to the following thirteen respondents on August 18 and August 23, 2000: PT Gunung Gahapi Sakti (Sakti), PT Jakarta Kyoei Steel Works Ltd. (Jakarta Steel Group) (Kyoei), PT The Master Steel Manufacturing Co., (Master Steel), PT Hanil Jaya Metal Works (Hanil), PT Bhirma Steel (Bhirma), PT Inter World Steel Mills Indonesia (Inter World), Jakarta Steel Megah Utama (Jakarta Steel Group) (Megah Utama), PT Jakarta Steel Perdana Industri (Jakarta Steel Group) (Perdana), Krakatau Wajatama (Krakatau), PT Jakarta Cakra Tunggal (Tunggal), PT Pulogadung Steel (Pulogadung), PT Gunung Gahapi Bahara (Gahapi), and PT Gunung Garuda (Garuda). On August 18, 2000, the Department issued a partial section A questionnaire to the Association of Indonesian Steel Billet and Concrete Producers and requested that it forward the questionnaire to any other known producers/exporters of rebar. The Department established August 28, 2000, as the deadline for responding to the partial section A questionnaires.

By the August 28, 2000, deadline, the Department had received responses from the following six companies: Kyoei, Inter World, Megah Utama, Gahapi, Garuda and Master Steel. Of the six timely responding companies, Master Steel was the only company to report exports of rebar to the United States during the POI. We conducted a Customs data query and confirmed the no shipments claims made by the remaining five companies listed above.

On August 30, 2000, the Department issued a complete antidumping questionnaire to Master Steel. In addition, on August 30, 2000, the Department received a no shipment response from Tunggal.

On September 4, 2000, Pulogadung mailed a no shipment response to the Department. However, the response did not reach the appropriate Department officials until September 7, 2000. On September 11, 2000, Hanil sent a no shipment response to the Department. Therefore, as discussed below, the Department sent Pulogadung and Hanil two FA letters, the first addressing no response and the second addressing late response.

On September 6, 2000, the Department notified the following five companies that their ''no shipment'' responses were subject to verification and that, if shipments were ultimately discovered, the Department may have to rely upon facts available in making its determinations in this proceeding: Kyoei, Inter World, Megah Utama, Gahapi, and Garuda. In addition, on September 6, 2000, the Department notified the following six non-responsive companies that the Department had not received their partial section A questionnaire responses and that, as a result, the Department would have to rely upon FA in making its determinations in this proceeding: Sakti, Bhirma, Krakatau, Perdana, Hanil, and Pulogadung.

On September 13, 2000, the Department notified Tunggal, Pulogadung and Hanil, that the Department had not received their partial A responses by the August 28, 2000, deadline and that, as a result, the Department would have to rely upon FA in making its determinations in this proceeding.

In October 2000, Master Steel submitted its sections A, B, C, and D questionnaire responses. In the initial response to our antidumping questionnaire, we found that substantial information in the questionnaire remained unanswered. Master Steel failed to provide: (1) The transfer price, cost of production or market price of the major input received from its affiliate, (2) product-specific costs, (3) the quantity of each control number produced during the POI, (4) POI specific costs, (5) costs on the same weight and currency basis as home market sales, (6) worksheets showing its calculation of the general and administrative expense ratio and the financial expense ratio, (7) an explanation concerning affiliation issues, (8) accurate control numbers (CONNUMs), (9) an explanation of zero values for certain selling expenses, (10) clarification concerning the appropriateness of the reported U.S. sales date, (11) home market (HM) shipment dates, (12) accurate HM payment dates, (13) an explanation and reconciliation of HM and U.S. imputed credit expenses, (14) an explanation of missing product specifications, (15) clarification concerning U.S. inland freight, and (16) an explanation of its reported packing expenses. *See* October 23, 2000, and November 2, 2000, supplemental questionnaires.

Master Steel's failure to provide this information resulted in an incomplete and unreliable cost response and home market and U.S. sales listings, and an inaccurate total quantity and value for Master Steel's POI sales. In order to address these and other deficiencies, we issued supplemental questionnaires on October 23, and November 2, 2000, as noted above. On November 7, 2000, Master Steel submitted a timely response to the Department's October 23, 2000, section A supplemental questionnaire. On November 9, 2000, via email, Master Steel requested an eighteen day extension of time for filing its response to the Department's November 2, 2000, supplemental questionnaire (supplemental questionnaire). On November 14, 2000, in response to Master Steel's November 9, 2000, extension request, and after receiving several improperly submitted submissions (*i.e.* submissions that were presented via facsimile and email), the Department sent Master Steel a letter granting it an extension until November 20, 2000. In addition, the letter once again reiterated the Department's requirement that all documents submitted to the Department must be properly filed and served on all interested parties, in accordance with 19 CFR 351.103 (b) and 19 CFR 351.303. The Department informed Master Steel that it would no longer accept submissions that were not officially submitted to and stamped by the Central Records Unit (CRU) with the date and time of receipt. *See* Letter from the Department of Commerce (November 14, 2000). The November 14, 2000, letter, as well as the Department's previous letters, also advised Master Steel of the potential repercussions (*i.e.,* rejection of responses, use of FA) that could occur from its failure to abide by the Department's filing requirements.

On November 17, 2000, Master Steel, via facsimile, requested yet another extension of time to file its supplemental questionnaire response. Although this extension request was improperly submitted, the Department decided to grant it until November 27, 2000, in case Master Steel had not received the Department's November 14, 2000, letter prior to sending its November 17, 2000, facsimile requesting an extension.

On November 23, 2000, Master Steel, via facsimile, requested another extension of time to file its response to the Department's November 2, 2000, supplemental questionnaire. On November 30, 2000, the Department granted Master Steel an extension until December 1, 2000, to file its response. In addition, the November 30, 2000,

letter noted the improper submission of Master Steel's most recent extension request and stated that this extension would be the last extension granted for Master Steel to respond to the Department's supplemental questionnaire. The Department explained that it was not in a position to grant any further extensions to Master Steel because of the impending deadline for publication of the preliminary determination, the fact that there would not be sufficient time to analyze the Master Steel responses, and the inadequate time to issue supplemental questionnaires regarding any information that Master Steel would have submitted.

However, despite the Department's explanation of the proper filing requirements in its previous extension letters, on December 5, 2000, Master Steel submitted an untimely response to sections B, C, and D of the Department's supplemental questionnaire.

In accordance with section 776(a) of the Act, we have determined that the use of adverse FA is warranted for Sakti, Bhirma, Krakatau, Perdana, Hanil, Pulogadung, Tunggal and Master Steel. Sakti, Bhirma, Krakatau, and Perdana failed to respond to the Department's partial A questionnaire. Hanil, Pulogadung and Tunggal failed to respond to the Department's partial section A questionnaire by the applicable deadline. Because these respondents failed to provide the requested quantity and value information by the applicable deadline, the Department must use FA, in accordance with section 776(a) of the Act. The Department has also determined that because these companies either failed to respond to the partial section A questionnaire, or failed to respond in a timely manner to the partial section A questionnaire, they did not act to the best of their ability to comply with the Department's request for information. Without completed questionnaire responses, the Department lacks critical information that is necessary to the dumping calculation and cannot determine an accurate dumping margin. Therefore, in accordance with section 776(b) of the Act, the Department has used an adverse inference in determining a margin for these companies.

With respect to Master Steel, Master Steel failed to provide, within the applicable deadlines, its responses to the Department's supplemental questionnaires. *See Memorandum Regarding the Application of Adverse Facts Available to Master Steel,* dated, January 16, 2001 (*Master Steel FA Memo*). Despite the Department's repeated attempts, pursuant to section 782(d) of the Act, to obtain the missing information, Master Steel failed to respond in a timely manner. As a result, we do not have a reliable home market or U.S. sales listing to use for comparison purposes in accordance with our practice. In addition, we also question whether Master Steel provided the appropriate date of sale for its reported U.S. sales. Moreover, Master Steel submitted an incomplete cost response, with deficiencies concerning such issues as product specific costs, costs for major inputs received from affiliated parties, and the quantity of specific CONNUMs produced during the POI. *See Master Steel FA Memo.* Master Steel did not notify the Department that it would be unable to submit the requested information, nor did it provide any explanation or propose an alternate form of submitting the required data, pursuant to section 782(c)(1) of the Act. *See Master Steel FA Memo.*

We are unable, under the application of section 782(e), to use the company-specific information contained in the responses we did receive from Master Steel, given that the deadline for submitting the supplemental questionnaire responses has passed, and the responses currently on record are so incomplete that they cannot serve as a reliable basis for reaching the applicable determination. *See Master Steel FA Memo.*

Because the information that Master Steel failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

We also find that the application of an adverse inference in this case is appropriate. Master Steel failed to provide critical data regarding COP, affiliations, accurate control numbers, explanation of zero values for certain selling expenses, HM shipment dates, accurate HM payment dates, and *inter alia* clarification regarding its choice for date of sale. Moreover, despite the Department's directions in the questionnaires and the numerous extensions granted, Master Steel made no effort to provide any explanation or propose an alternate form of submitting the data. *See Master Steel FA Memo.* For these reasons, we find that Master Steel did not act to the best of its ability in responding to the Department's requests for information, *see, e.g., Circular Stainless Steel Hollow Products,* and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See Master Steel FA Memo.*

Ukraine

In accordance with sections 776(a) and (b) of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Krovoi Rog State Mining and Metal Works (Krivorozhstal). On August 18, 2000, the Department issued a nonmarket economy questionnaire to the Embassy of Ukraine in Washington, DC and, concurrently, to the five known Ukrainian producers of rebar. Questionnaires were sent, specifically, to Dneprovsky Iron and Steel Works (Dneprovsky), Makeevsky Iron and Steel Works, Kramatorsk Iron and Steel Works, Yenakievsky Iron and Steel Works, and Krivorozhstal. By the extended September 22, 2000, deadline for responding to the Department's section A questionnaire, we received responses from Dneprovsky and Krivorozhstal. Dneprovsky stated that the company does not export rebar to the United States. The Department received quantity and value data from Krivorozhstal and selected Krivorozhstal as the sole mandatory respondent in the Ukraine case. Krivorozhstal, over the course of this proceeding, has not provided the Department with complete, documented, product-specific factors of production information. Accordingly, we are relying on the facts otherwise available for purposes of the preliminary determination.

The questionnaire sent to Krivorozhstal on August 18, 2000, described in detail how respondents should report factors of production data for intermediate products produced by separate production processes. On October 10, 2000, Krivorozhstal submitted a section D questionnaire response with incomplete factors of production data. On October 26, pursuant to section 782(d) of the Act, the Department issued a supplemental questionnaire and reminded Krivorozhstal of its obligation to provide complete factors of production data. On November 9, 2000, Krivorozhstal responded to the Department's supplemental questionnaire and, again, failed to provide complete factors of production information. Krivorozhstal's November 9, 2000, response, while providing some additional data, did not properly document and support with narrative explanation these additional factors of production data, again did not provide the Department with product-specific factors of production and, finally, did not propose an appropriate

alternative methodology for deriving product-specific factors of production. *See Decision Memorandum to Troy Cribb Regarding the Use of Facts Available for the Antidumping Investigation of Steel Concrete Reinforcing Bars from Ukraine (Ukraine FA Memo*) (January 16, 2001) for further detail regarding the inadequacy of Krivorozhstal's submitted data.

Because Krivorozhstal has refused to provide the Department with a full accounting of its factors of production, the Department must use facts available under sections 776(a)(2)(A) of the Act, and (B) of the Act. In addition, we consider that Krivorozhstal has not acted to the best of its ability to provide complete factors of production information, since, as explained above, Krivorozhstal has failed to provide basic information readily at its disposal.

2. Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petitions for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petitions. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the (EP) and normal value (NV) calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petitions has probative value, as certain information included in the margin calculations in the petitions is from public sources concurrent, for the most part, with the relevant POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the January 16, 2001, memoranda to the file regarding *Application of Facts Available for Huta Ostroweic, S.A. and Stalexport, S.A.; Master Steel FA Memo; Corroboration of the Petition Data for Indonesia* at section C; and *Ukraine FA Memo* on file in the Central Records Unit, Room B–099, of the Main Commerce Department building).

Accordingly, in selecting adverse facts available with respect to Stalexport, the Department determined to apply a constructed value margin rate of 52.07 percent, the highest margin alleged for Poland in the petitioner's July 10, 2000, addendum to the petition. For Indonesia, as FA for Sakti, Bhirma, Krakatau, Perdana, Hanil, Pulogadung and Master Steel, the Department applied a constructed value margin rate of 71.01 percent, the highest margin alleged for Indonesia in the petitioner's July 10, 2000, addendum to the petition. For Ukraine, inasmuch as we have been unable to rely on Krivorozhstal's questionnaire responses, we have not determined whether Krivorozhstal warrants a separate rate. We have assigned to all exports of subject rebar from the Ukraine a country-wide rate of 41.69 percent, the single margin alleged in the petitioner's July 10, 2000, addendum to the petition.

Separate Rates—Ukraine. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate. In the case involving Ukraine, the single respondent company, Krivorozhstal, has claimed to be sufficiently independent to warrant a separate rate. However, since, as explained above, Krivorozhstal has impeded the Department's investigation, we have not made a determination as to whether Krivorozhstal merits a separate rate, and are assigning a single country-wide rate for all exporters of subject merchandise from Ukraine.[5]

[5] We note that, inasmuch as the petition contains only a single margin, the same rate would apply to Krivorozhstal and all other exporters of subject merchandise from Ukraine, even if Krivorozhstal had been assigned a separate rate. In the event that the Department is able to base its final determination on the data submitted by Krivorozhstal rather than on the facts otherwise available, the Department will determine whether Krivorozhstal merits a separate rate.

All Others—Poland and Indonesia. Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated ''all others'' rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than facts available margins to establish the ''all others'' rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. With respect to Poland and Indonesia, because there is no other information on the record on which to base an ''all others'' rate, consistent with the Department's practice, we have based the ''all others'' rate on the simple average of the rates provided by the petitioner. *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5528 (February 4, 2000).

Final Critical Circumstances Determinations

We will make a final determination concerning critical circumstances for Poland and Ukraine when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In the case of Poland and Ukraine, because of our preliminary affirmative critical circumstances findings in these cases, and in accordance with section 733(e) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Poland and Ukraine that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. For Poland, Indonesia and Ukraine, we are also instructing the Customs Service to require a cash deposit or the posting of

a 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)
Poland:	
Huta Ostrowiec S.A. ("Stalexport")	52.07
All Others	47.13
Indonesia:	
Sakti	71.01
Bhirma	71.01
Krakatau	71.01
Perdana	71.01
Hanil	71.01
Pulogadung	71.01
Tunggal	71.01
Master Steel	71.01
All Others	60.46
Ukraine:	
Ukraine-Wide Rate	41.69

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final antidumping determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

Public Comment

For the investigations of steel concrete reinforcing bars from Poland, Indonesia, and Ukraine, case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several rebar cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If these investigations proceed normally, we will make our final determinations in the investigations of steel concrete reinforcing bars from Poland, Indonesia and Ukraine no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2522 Filed 1–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–844]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Jeff Pedersen at (202) 482–3936 and (202) 482–4195, respectively; AD/CVD Enforcement, Office 4, Group II, 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 Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from the Republic of Korea (Korea) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the **SUSPENSION OF LIQUIDATION** section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of these investigations, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening material injury or materially injuring a regional industry in the United States producing the domestic like product. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

The Department issued antidumping questionnaires to the three mandatory respondents in Korea on August 18, 2000.[2] We received responses from two companies, Dongkuk Steel Mill Co., Ltd. (DSM) and Korea Iron & Steel Co., Ltd. (KISCO). The third respondent, Hanbo Iron & Steel Co., Ltd. (Hanbo) did not respond to our questionnaire. We confirmed with Federal Express that Hanbo did receive our questionnaire (*see* Memorandum from Jeff Pedersen to the File, dated January 16, 2001). On September 14, 2000, we notified Hanbo that we had not received its questionnaire response and that, as a result, the Department may have to rely on facts available in making our determinations in this proceeding. We issued supplemental questionnaires pertaining to sections A, B, C, and D of the antidumping questionnaire to DSM and KISCO in September, October, November, and December 2000. DSM and KISCO responded to these supplemental questionnaires in October, November, and December 2000.

DSM and KISCO requested that they not be required to report certain information requested in the questionnaires. Specifically they requested that they be permitted to exclude three types of data. First, on September 20, 2000, DSM and KISCO reported that they each purchased a small quantity of rebar from each other, which was resold to unaffiliated home market customers. DSM and KISCO also reported that they purchased a small quantity of rebar from unaffiliated suppliers, which was resold to unaffiliated home market customers. Since their accounting systems do not identify which resales of purchased rebar related to purchases from affiliated suppliers and which related to purchases from unaffiliated suppliers, DSM and KISCO stated that their accounting systems prevent them from reporting the downstream sales of rebar purchased from affiliated suppliers (*i.e.,* each other). Therefore, DSM and KISCO requested that they be allowed to report the upstream sale from DSM to KISCO, and vice versa, while being allowed to exclude the downstream sale to the unaffiliated customer.

Second, DSM and KISCO stated in their section A responses that they have not reported their home market sales of rebar purchased from unaffiliated suppliers because such rebar does not fall within the definition of the ''foreign like product.'' DSM and KISCO contend that ''foreign like product'' is defined as merchandise ''produced in the same country by the same person as the subject merchandise.'' Since they did not produce the rebar in question, DSM and KISCO did not include these home market sales in their reported sales listing.

Lastly, in the September 20, 2000, submission, KISCO requested that it be allowed to exclude certain U.S. market sales of rebar that were cut to length and then repacked in Korea by its affiliate, Pusan Steel Mill Co., Ltd. (PSM), prior to export. According to KISCO, these sales account for a tiny portion of its U.S. market sales, are not typical of KISCO's normal course of business, and would complicate the Department's dumping analysis.

On September 29, 2000, the Department issued to DSM and KISCO a supplemental questionnaire concerning these exclusion requests. We received their joint response on October 23, 2000. The information contained in this response, in addition to information contained in DSM and KISCO's responses to the antidumping questionnaire, indicated that the sales covered by these exclusion requests were not representative of normal selling behavior, were made in such small volumes that they would have an insignificant effect on the calculation, and, if not excluded, would unduly complicate the Department's analysis. Therefore, we granted the three exclusion requests discussed above. *See* Letter from Thomas F. Futtner, Acting Office Director, to DSM and KISCO, dated November 6, 2000.

On November 9, 2000, the petitioner requested a postponement of the preliminary determination in this investigation. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine,* 65 FR 69909 (November 21, 2000).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On December 28, 2000, DSM and KISCO requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. DSM and KISCO also included a request to extend the provisional measures to not more than 135 days after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI for this investigation is April 1, 1999, through March 31, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000).

Scope of Investigations

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for all of 1999 and the first half of 2000, which we obtained from the American Embassy in Seoul, we found that four Korean exporters shipped rebar to the United States during that time period. Due to limited resources we determined that we could investigate only the three largest producers. *See* Memorandum from Valerie Ellis and Paige Rivas to Holly A. Kuga, Selection of Respondents, dated August 25, 2000. Therefore, we designated DSM, KISCO, and Hanbo as mandatory respondents and sent them the antidumping questionnaire. On September 18, 2000, we received section A questionnaire responses from DSM and KISCO. We did not, however, receive a response from Hanbo.

Facts Available (FA)

Section 776(a) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In this proceeding, Hanbo declined to respond at all to the Department's antidumping questionnaire. Because Hanbo provided no information whatsoever, sections 782(d) and (e) of the Act are not relevant, and the Department must resort to the use of facts available for this respondent, in accordance with 776(a) of the Act. Moreover, we note that at no time did Hanbo contact the Department and state that it was having difficulty responding to the questionnaire or otherwise explain why it could not provide the requested information. Thus, we have also determined that this respondent has not cooperated to the best of its ability. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the FA. As FA, the Department has applied a margin rate of 102.28 percent, the highest alleged margin for Korea in the petition. *See* Memorandum from Holly A. Kuga to Troy H. Cribb, Antidumping Investigation of Steel Concrete Reinforcing Bars From The Republic of Korea—The Use of Facts Available for Hanbo Iron & Steel Co. Ltd., and Corroboration of Secondary Information, dated January 16, 2001 (*Facts Available Memorandum*).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.316, 103d Cong., 2d Sess. (1994) (hereinafter, the SAA) states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for this uncooperative respondent because, in the absence of verifiable data provided by Hanbo, the petition information is the best approximation available to the Department of Hanbo's pricing and selling behavior in the U.S. market. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.,* import statistics and foreign market research reports). *See Initiation Notice.*

For purposes of this preliminary determination, we attempted to corroborate the information in the petition with information gathered since the initiation. We compared the export price (EP) and CV data which formed the basis for the highest margin in the petition to the price and expense data provided by DSM and KISCO during the investigation and, to the extent practicable, found that it had probative value (*see Facts Available Memorandum*).

Critical Circumstances

In the petition filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Korea. On July 18, 2000, concurrent with the initiation of the LTFV investigations on imports of rebar from Korea and other countries, the Department announced its intention to investigate the petitioner's allegation that critical circumstances exist with respect to imports of rebar from Korea. On August 14, 2000, the ITC determined that there is a reasonable indication of material injury to a regional domestic industry from imports of rebar from Korea.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist, if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject

merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.''

Because we are not aware of any existing antidumping order in any country on rebar from Korea, we do not find a history of dumping from Korea, pursuant to section 733(e)(1)(A)(i) of the Act. Further, with respect to section 733(e)(1)(A)(i) of the Act, the magnitude of the dumping margins found in this preliminary determination with respect to DSM, Kisco, and the producers of subject merchandise in the ''all others'' category, are insufficient to conclude that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales.

With respect to DSM, KISCO and producers of subject merchandise in the ''all others'' category, we find (*see* below) that they do not satisfy the statutory criterion regarding massive imports necessary for an affirmative finding of critical circumstances, section 733(e)(1)(B) of the Act. Therefore, we did not address the issue of whether importers had knowledge that DSM, KISCO and the ''all others'' companies were selling the subject merchandise at less than its fair value.

As mentioned above, Hanbo was selected as a mandatory respondent in this investigation and did not respond to our antidumping questionnaire, nor provide the requested shipment data necessary for our critical circumstances analysis. On September 14, 2000, we notified Hanbo that we had not received its questionnaire response and that, as a result, the Department may have to rely on facts available in making our determinations in this proceeding. With respect to imports of subject merchandise sold by Hanbo, we have determined the preliminary dumping margin to be 102.28 percent (based on adverse facts available). This margin exceeds the 25 percent threshold used by the Department to impute knowledge that the subject merchandise was causing injury. Therefore, pursuant to section 733(e)(1)(A)(ii) of the Act, we find that there is a reasonable basis to believe or suspect that importers knew or should have known that rebar imports from Hanbo were being sold at less than fair value and there was likely to be material injury by reason of such sales.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.,* the base period), and three months following the filing of the petition (*i.e.,* the comparison period). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petitioner argues that importers, exporters, or producers of rebar from Korea had reason to believe that an antidumping proceeding was likely before the filing of the petition. Based upon information contained in the petition, we found that press reports and published statements were sufficient to establish that, by December 1999, importers, exporters, and foreign producers knew or should have known that a proceeding was likely concerning rebar from Korea. As a result, the Department has considered whether there have been massive imports after that time, based on a comparison of periods immediately preceding and following the end of December 1999. *See* Memorandum from Tom Futtner to Holly A. Kuga, Antidumping Duty Investigation of Steel Concrete Reinforcing Bars from Korea—Preliminary Determination of Critical Circumstances (*Critical Circumstances Preliminary Determination Memorandum*), dated January 16, 2001.

In order to determine whether imports from Korea have been massive, the Department requested that DSM, KISCO and Hanbo provide their shipment data for the last three years. We note that we have collapsed DSM and KISCO into a single entity for purposes of this antidumping investigation (*see* the Collapsing section below). Therefore, we conducted our analysis on the shipment volumes from the collapsed entity DSM/KISCO. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 65 FR 5554, 5561 (February 4, 2000). Based on our analysis of the shipment data reported, because imports have decreased during the comparison period, we preliminarily find that the criterion under section 733(e)(1) of the Act has not been met, *i.e.,* there have not been massive imports of rebar from DSM/KISCO over a relatively short time. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, we preliminarily determine that critical circumstances do not exist for imports of rebar produced by DSM/KISCO.

With respect to imports of this merchandise from producers in the ''all others'' category, it is the Department's normal practice to conduct its critical circumstances analysis of companies in this category based on the experience of the investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* (*Rebar from Turkey*) 62 FR 9737, 9741 (Mar. 4, 1997). In *Rebar from Turkey,* the Department found critical circumstances for the ''all others'' category because it found critical circumstances for three of the four companies investigated. However, as we more recently determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329 (May 6, 1999) (*Hot-Rolled Steel from Japan*), we are concerned that literally applying that approach could produce anomalous results in certain cases. Thus, in deciding whether critical circumstances apply to companies covered by the ''all others'' rate, the Department also considers the traditional critical circumstances criteria.

In determining whether imports from the ''all others'' category have been massive, the Department followed its normal practice of conducting its critical circumstances analysis of companies in this category based on the experience of the investigated companies. In this case, we note that DSM/KISCO account for the majority of rebar exports from Korea. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, it is appropriate to extend the experience of DSM/KISCO to the ''all others'' category and determine that there have not been massive imports of rebar from the ''all others'' category over a relatively short time. Since the second

criterion under section 733(e)(1) of the Act has not been met, we find that critical circumstances do not exist for imports of rebar produced by the ''all others'' category.

With regard to Hanbo, we note that since Hanbo refused to respond to the Department's antidumping questionnaire, there is no verifiable information on the record with respect to Hanbo's export volumes. For this reason, we must use the facts available in accordance with section 776(a) of the Act in determination of whether there were massive imports of merchandise produced by Hanbo. With regard to aggregate import statistics, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. Nor do these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for Hanbo. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available, and determine that there were massive imports from Hanbo. Since we also find that, pursuant to section 733(e)(1)(A)(ii) of the Act, there is a reasonable basis to believe or suspect that importers knew or should have known that rebar imports from Hanbo were being dumped and there was likely to be material injury by reason of such sales, we preliminary determine that critical circumstances exist with respect to imports of rebar produced by Hanbo.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the Scope of Investigation section, above, and sold in Korea during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on three criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or CV: Type of steel, yield strength, and size. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Collapsing

Section 771(33)(E) of the Act provides that ''affiliated persons'' include ''any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.'' Furthermore, under section 351.401(f) of the Department's regulations, we will treat ''two or more affiliated producers as a single entity where those producers (1) have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) the Secretary concludes that there is significant potential for the manipulation of price or production'' based on factors such as: (a) The level of common ownership; (b) the extent to which managerial employees or board members of one firm sit on the board of the other firm; and (c) whether operations are intertwined (*e.g.,* through sharing of sales information, involvement in production and pricing decisions, sharing facilities/employees, and/or significant transactions between the two affiliated producers).

In this case, it is undisputed that DSM owns over 5 percent of KISCO's outstanding equity. Thus, DSM and KISCO are affiliated as defined by section 771(33)(E) of the Act. Regarding the first collapsing criterion listed in section 351.401(f) of the Department's regulations, DSM and KISCO stated that both companies ''produce the same grades of rebar . . . {and} there were no grades that were produced by one company but not the other.'' In addition, both companies stated that ''there are no significant differences in the production processes used by DSM and KISCO to produce rebar.'' *See* DSM and KISCO's October 23, 2000, submission at 46 and 47. In addition, we note that DSM and KISCO's U.S. market sales of rebar (by quantity) are not large percentages of their total home market sales of rebar. For this reason, we conclude that both companies potentially have the capacity to absorb the other's export market sales, in the event they were to shift export sales to the company with a lower margin. In analyzing whether there exists the potential for manipulation of price or production, we note that in addition to DSM's direct ownership of KISCO, DSM has a significant level of indirect ownership of KISCO through the Chang family, which founded both DSM and KISCO. Concerning the extent to which DSM and KISCO have shared managerial employees and board members, we note that two of KISCO's current senior managers are former senior managers at DSM, and that one of DSM's current senior managers was a former director at KISCO. Lastly, we note that DSM and KISCO have intertwined operations because both companies sold a small amount of rebar to each other in the home market, which entailed the sharing of certain sales information, and used the same affiliated transportation company for certain home market sales.

Based on these reasons, we find that DSM and KISCO are affiliated producers with similar or identical production facilities that would not require substantial retooling of either facility in order to restructure manufacturing priorities. We also find that there exists a significant potential for the manipulation of price or production. For further discussion, *see* Decision Memorandum: Whether to Collapse Dongkuk Steel Mill Co., Ltd. and Korea Iron and Steel Co., Ltd. Into a Single Entity, dated December 5, 2000. Therefore, we have collapsed DSM and KISCO, and are treating them as a single entity (hereafter referred to as DSM/KISCO) for purposes of the preliminary determination in this antidumping investigation.

Fair Value Comparisons

To determine whether sales of rebar from Korea were made in the United States at LTFV, we compared the EP or the constructed export price (CEP) to the normal value (NV), as described in the EP and CEP and NV sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs. We compared these to weighted-average home market prices.

EP and CEP

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For DSM/KISCO, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. During the POI, DSM/KISCO made both EP and CEP transactions. We

calculated an EP for sales where DSM/KISCO sold the merchandise directly to unaffiliated U.S. customers and where DSM/KISCO sold the merchandise to unaffiliated Korean companies, with knowledge that these companies in turn sold the merchandise to U.S. customers. We also calculated an EP for sales to PSM,[3] an affiliated Korean company, who in turn sold the merchandise to U.S. customers. We calculated a CEP for sales where DSM/KISCO sold the merchandise to its U.S. affiliate, Dongkuk International Inc. (DKA), who then resold the merchandise to unaffiliated U.S. customers. We also calculated a CEP for sales made by DSM/KISCO to an affiliated home market company, Dongkuk Industries Co. Ltd. (DKI), who in turn sold the merchandise to DKA, who then sold the merchandise to unaffiliated U.S. customers.

We calculated EP in accordance with section 772(c)(1)(B) of the Act, by adding, where applicable, to the starting price an amount for duty drawback. We also deducted from the starting price, where applicable, amounts for discounts and rebates. We made deductions, where applicable, from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include, where appropriate, foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties and U.S. inland freight. We adjusted the reported credit expense to reflect a more accurate shipping period. *See* Calculation Memorandum of the Preliminary Determination for the Investigation of Dongkuk Steel Mill Co., Ltd., and Korea Iron & Steel Co., Ltd., January 16, 2001 (*Preliminary Calculation Memorandum*).

We calculated CEP, in accordance with section 772(c)(2)(A) of the Act, by adding, where applicable, to the starting price an amount for duty drawback. We also deducted from the starting price, where applicable, amounts for discounts and rebates, and movement expenses from the starting price. Movement expenses include, where appropriate, foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties, and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and credit costs) and indirect selling expenses. We adjusted the reported credit expense to reflect a more accurate shipping period. *See Preliminary Calculation Memorandum.* Finally, in accordance with section 772(d)(3) of the Act, we made a deduction for CEP profit.

NV

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For this investigation, we found that DSM/KISCO has a viable home market of rebar. The respondents submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the Calculation of NV Based on Home Market Prices and Calculation of NV Based on CV, sections below.

B. Affiliated-Party Transactions and Arm's-Length Test

During the POI, DSM sold a small amount of rebar to KISCO, who then resold the merchandise to unaffiliated home market customers. Similarly, KISCO sold a small amount of rebar to DSM, who then resold the merchandise to unaffiliated home market customers. Since we have collapsed these two companies into a single entity, we requested that DSM and KISCO remove these sales, which we considered to be inter-company sales, from their home market sales database.

During the POI, DSM/KISCO also had home market sales to other affiliated companies. Both DSM and KISCO had home market sales to DKI, an affiliated Korean company that consumed rebar in its construction division, while KISCO had home market sales to PSM, an affiliated home market company that also consumed rebar during the POI. *See* DSM/KISCO's September 18, 2000, section A response at 3. We applied the arm's-length test to sales from DSM/KISCO to these affiliated companies by comparing them to sales of identical merchandise from DSM/KISCO to unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, commissions, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997).

A. COP Analysis

On June 28, 2000, the petitioner alleged that sales of rebar in the home market of Korea were made at prices below the fully absorbed COP, and accordingly, requested that the Department conduct a country-wide sales-below-COP investigation. Based upon the comparison of the adjusted prices from the petition for the foreign like product to its COP, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of rebar manufactured in Korea were made at prices below the COP. See Initiation Notice. As a result, the Department has conducted an investigation to determine whether DSM/KISCO made sales in the home market at prices below its COP during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by DSM and KISCO in their cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued. Since we collapsed DSM and KISCO, and are treating them as a single entity for the purposes of this antidumping investigation, we merged their

[3] Although the Department granted DSM/KISCO its exclusion request concerning its U.S. sales through PSM, DSM/KISCO reported these sales in its U.S. sales database.

separately reported cost databases into a single, combined cost database by weight-averaging DSM and KISCO's individually reported costs. We used the combined costs in our dumping analysis. *See Preliminary Calculation Memorandum.*

DSM. We adjusted DSM's G&A expense ratio to exclude gain on disposal of land, freight revenue, gain on equity method investments and gain on insurance settlement and to include donation expenses in the calculation of the G&A expense ratio.

In addition, we adjusted DSM's financial expense ratio to exclude the long-term portion of exchange gains and losses generated by foreign currency denominated debt. *See* Memorandum from Robert Greger, dated January 16, 2001.

KISCO

We adjusted KISCO's G&A expense ratio to: (1) Exclude the ''non-operating income from the gain on equity method valuation,'' from the miscellaneous gains section of KISCO's financial statement; and (2) included donation expenses in the calculation of the G&A expense ratio.

Further, we adjusted KISCO's financial expense ratio to exclude the long-term portion of exchange gains and losses generated by foreign currency denominated debt. *See* Memorandum from Michael Harrison, dated January 16, 2001.

2. Test of Home Market Sales Prices. We compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities [4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing.

3. Results of the COP Test. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of rebar, more than 20 percent of the home market sales by DSM/KISCO were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

1. Calculation of NV Based on Home Market Prices. We determined price-based NVs for DSM/KISCO as follows. We made adjustments for any differences in packing, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

We based home market prices on the packed prices to unaffiliated purchasers in Korea. We adjusted, where applicable, the starting price for discounts and rebates and movement expenses (foreign inland freight and warehousing). We also made COS adjustments, where applicable, by deducting direct selling expenses incurred for home market sales (credit expense and warranty). For comparisons made to EP sales, we made COS adjustments by adding U.S. direct selling expenses. For comparisons made to CEP sales, we did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

2. Calculation of NV Based on CV. Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of rebar for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV. Since there were contemporaneous home market sales of identical merchandise for all U.S. market EP and CEP sales, we did not resort to CV in this investigation.

3. Level of Trade (LOT)/CEP Offset. In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction

[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

of expenses pursuant to section 772(d) of the Act.

In this investigation, DSM/KISCO reported that it sold subject merchandise to three types of customers (distributors, end-users, and government entities) in the home market. Further, it indicated that, for each of the two originally reported channels of distribution, it provided the same types of selling functions (market research, price negotiations, order processing, sales calls, interactions with customers, inventory maintenance, technical advice, warranty services, Korean inland freight, and advertising) at the same levels of intensity for each of the three types of customers. Since all three types of customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market. *See* Memorandum from Ronald Trentham to Thomas F. Futtner, Level of Trade Analysis: Dongkuk Steel Mill Co., Ltd. and Korea Iron & Steel Co., Ltd. (*LOT Memorandum*), dated January 16, 2001.

DSM/KISCO also reported that it made EP and CEP sales of subject merchandise to three types of customers (Korean trading companies, U.S. distributors, and U.S. end-users) through four channels of distribution in the U.S. market. The four channels are as follows: (1) sales from DSM directly to unaffiliated U.S. distributors and end-users, (2) sales from DSM to unaffiliated Korean trading companies, who then resold the merchandise to U.S. customers,[5] (3) sales from DSM to DKA, who then resold the merchandise to unaffiliated U.S. distributors and end-users, and (4) sales from DSM to DKI, who then resold the merchandise to DKA, who then resold the merchandise to unaffiliated U.S. distributors and end-users. Further, DSM/KISCO indicated that it provided certain types of selling functions (market research, price negotiations, order processing, sales calls, interactions with customers, inventory maintenance, technical advice, warranty services, Korean inland freight, and advertising) for each of the three types of customers. We examined the types of selling functions provided in each of the four U.S. market channels of distribution, and the level of intensity with which each function is provided, and determined, based upon the selling functions performed, that EP sales and CEP sales are sold at two different LOTs, specifically, LOT1 for EP sales, and at a more remote level of selling activity, LOT2, for CEP sales. *See LOT Memorandum.* We then compared LOT1 (the LOT for EP sales) to the home market LOT and found that EP sales are provided at a different LOT than the home market sales. We also compared LOT2 (the LOT for CEP sales) to the home market and found that CEP sales are provided at the same LOT as the home market transactions. Thus, no LOT adjustment is warranted for CEP comparisons.

Section 773(7)(A)(ii) of the Act states that the Department will grant a LOT adjustment only ''if the difference in the level of trade is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.'' Although we find that the U.S. market LOT1 (EP sales) is different from the home market LOT, we are unable to calculate ''a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined'' because there is only one LOT in the home market. Thus, in this instance, we have also not granted DSM/KISCO a LOT adjustment to NV for EP comparisons.

Section 773(a)(7)(B) of the Act provides for a CEP offset to NV when NV is established at a more advanced LOT than the LOT of CEP. Since, in this instance, we have found that the U.S. market LOT2 (CEP sales) is the same as the home market LOT, we have not granted DSM/KISCO a CEP offset to NV. For a further discussion, *see* LOT Memorandum.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Korea when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In the case of rebar produced by Hanbo, because of our preliminary affirmative critical circumstances finding, and in accordance with section 733(e) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar produced by Hanbo that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

	Margin (percent)
Manufacturer/exporter:	
Dongkuk Steel Mill Co., Ltd/ Korea Iron & Steel Co., Ltd	21.70
Hanbo Iron & Steel Co., Ltd ...	102.28
All Others	21.70

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed

[5] DSM did not report the types of U.S. customers to which the unaffiliated Korean trading companies resold the subject merchandise.

within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2523 Filed 1–29–01; 8:45 am]

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Hazardous liquid and carbon dioxide pipelines; corrosion control standards; comments due by 2-6-01; published 12-8-00

TREASURY DEPARTMENT
Comptroller of the Currency
Corporate activities:
Federal branches and agencies; operating

subsidiaries; comments due by 2-5-01; published 12-5-00

National banks; fiduciary activities; comments due by 2-5-01; published 12-5-00

TREASURY DEPARTMENT
Thrift Supervision Office

Savings and loan holding companies:
Significant transactions or activities and capital adequacy review; comments due by 2-9-01; published 12-12-00

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:
Advertising and solicitation requirements; comments due by 2-6-01; published 12-8-00

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the 106th Congress, Second Session has been completed and will resume when bills are enacted into public law during the next session of Congress.

A cumulative List of Public Laws was published in Part II of the **Federal Register** on January 16, 2001.

Public Laws Electronic Notification Service (PENS)

Note: PENS will resume service when bills are enacted into law during the next session of Congress.

This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.