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Presidential Documents

Title 3—

The President

Proclamation 7506 of November 21, 2001

National Family Week, 2001

By the President of the United States of America

A Proclamation

American families are the bedrock of our society. They are the primary source of strength and health for both individuals and communities across our Nation. As we continue our recovery from the horrific acts committed by terrorists against the United States on September 11, our families provide us with a vital source of comfort and reassurance.

Americans grieve with those who suffered the loss of a family member in the brutal and cowardly terrorist attacks. The September 11 tragedy has allowed America to see firsthand the profound bonds of love that characterize the American family. Parents, children, spouses, and siblings mourned their lost loved ones, cared for the injured, and prayed for protection and health for all Americans. In the midst of great loss, we saw great love flowing from the hearts of America's families.

My Administration is committed to strengthening the American family. Many one-parent families are also a source of comfort and reassurance, yet a family with a mom and dad who are committed to marriage and devote themselves to their children helps provide children a sound foundation for success. Government can support families by promoting policies that help strengthen the institution of marriage and help parents rear their children in positive and healthy environments.

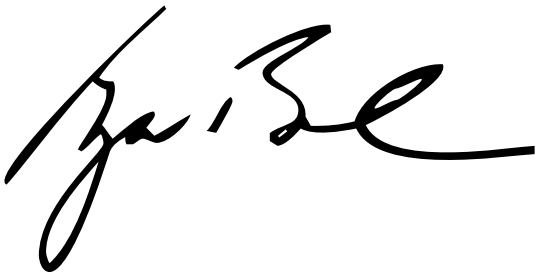
My proposed budget includes initiatives that encourage family cohesion. It provides over $60 million for grants that encourage responsible fatherhood. Grants would be awarded to groups that promote successful parenting and strong marriages and to faith-based and community organizations that help unemployed or low-income parents and their children avoid or leave welfare. This initiative will help spur new community-level approaches to aid low-income families.

To strengthen States' ability to promote child safety, stability, and well-being, my budget also proposes a substantial increase in funding for the Promoting Safe and Stable Families program. These additional resources will help States keep children with their biological families, when safe and appropriate, or place children with loving adoptive families. By undertaking more preventative efforts to help families in crisis, the prospects for children to live in a permanent home are enhanced.

As we observe National Family Week, we must work to strengthen families in America as individuals and through Government and community-based organizations. This week serves to remind us of the values, security, and love that we give and receive in our families.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 18 through November 24, 2001, as National Family Week. I invite the States, communities, and people of the United States to join together in observing this day with appropriate ceremonies and activities to honor our Nation's families.

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



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Rules and Regulations

Federal Register

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 88

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear West, Inc. Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1004. Amendment No. 4 will allow the storage of low burn-up spent fuel in the NUHOMS®–24P canister. In addition, the Technical Specifications (TS) will be revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes will be made to TS 1.2.1 and 1.2.15, Tables 1–1a, 1–1b, 1–1c, 1–1d, 1–2a, and 1–2c, and Figure 1–1. The CoC will be revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. Minor editorial changes will also be made to the CoC.

DATES: The final rule is effective February 12, 2002, unless significant adverse comments are received by December 31, 2001. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML012620237. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737or by e-mail to *pdr@nrc.gov.*

CoC No. 1004, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment No. 4, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, email *mlh1@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415–8126, e-mail *mlh1@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that approved the Standardized NUHOMS™–24P and –52B cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1004. Amendment No. 3 added the –61BT dry storage canister to the system.

Discussion

On February 23, 2001, and as supplemented on June 8, and October 4, 2001, the certificate holder (Transnuclear West, Inc.) submitted an

application to the NRC to amend CoC No. 1004 to permit a part 72 licensee to allow the storage of low burn-up spent fuel in the NUHOMS®–24P canister. In addition, the Technical Specifications (TS) will be revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes will be made to TS 1.2.1 and 1.2.15, Tables 1–1a, 1–1b, 1–1c, 1–1d, 1–2a, and 1–2c, and Figure 1–1. The Certificate of Compliance will be revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. Minor editorial changes will also be made to the CoC. No other changes to the Standardized NUHOMS®–24P, –52B, and –61BT cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS®–24P, –52B, and –61BT cask design listing in § 72.214 by adding Amendment No. 4 to CoC No. 1004. This amendment will allow the storage of low burn-up spent fuel in the NUHOMS®–24P canister. In addition, the TS will be revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes will be made to TS 1.2.1 and 1.2.15, Tables 1–1a, 1–1b, 1–1c, 1–1d, 1–2a, and 1–2c, and Figure 1–1. The CoC will be revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. Minor editorial changes will also be made to the CoC.

The amended Standardized NUHOMS®–24P, –52B, and –61BT cask system, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety and environment will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No.1004 is revised by adding the effective date of Amendment No. 4 and changing the applicant name from Transnuclear West, Inc. to Transnuclear Inc.

Procedural Background

This rule is limited to the changes contained in Amendment 4 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P, –52B, and –61BT cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on February 12, 2002. However, if the NRC receives significant adverse comments by December 31, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by December 31, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS®–24P, –52B, and –61BT cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS®–24P, –52B, and –61BT cask system within the list of approved spent fuel storage casks that power reactor

licensees can use to store spent fuel at reactor sites under a general license. This amendment will allow the storage of low burn-up spent fuel in the NUHOMS®–24P canister. In addition, the TS will be revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes will be made to TS 1.2.1 and 1.2.15 and Tables 1–1a, 1–1b, 1–1c, 1–1d, 1–2a, and 1–2c, and Figure 1–1. The CoC will be revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. Minor editorial changes will also be made to the CoC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, email *mlh1@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS®–24P and –52B cask design by adding it to the list of NRC-approved cask designs in § 72.214. Amendment No. 3 added the –61BT cask design. On February 23, 2001, and as supplemented on June 8, and October 4, 2001, the certificate holder Transnuclear West, Inc.), submitted an application to the NRC to amend CoC No. 1004 to permit a part 72 licensee to store low burn-up spent fuel in the NUHOMS®–24P canister. In addition, the TS will be revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes will be made to TS 1.2.1 and 1.2.15 and Tables 1–1a, 1–1b, 1–1c, 1–1d, 1–2a, and 1–2c, and Figure 1–1. The CoC will be revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. Minor editorial changes will also be made to the CoC.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the environment and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear West, Inc. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L

are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

SAR Submitted by: Transnuclear Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, and NUHOMS®–61BT.

* * * * *

Dated at Rockville, Maryland, this 13th day of November, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–29443 Filed 11–28–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–01–023]

RIN 2115–AE47

Drawbridge Operations Regulations; Lake Washington Ship Canal, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the dual Montlake Drawbridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, Washington. This rule allows the bridge operator to keep the bridge in the closed-to-navigation position at certain times to accommodate vehicular traffic before and after football and basketball games at the University of Washington sport facilities, Seattle, WA from November 12, 2001, through June 9, 2002.

DATES: This temporary final rule is effective from November 5, 2001, through June 9, 2002.

ADDRESSES: Unless otherwise noted, documents referred to in this rule are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067,room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintains the docket for this temporary final rule.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 33 Code of Federal Regulations 117.37 the District commander may authorize closures for public interest concerns based on the necessity for the closures, the reasonableness of the times and dates, and the overall effect on navigation and users of the bridge.

The closed draw of the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, Washington, provides 48 feet of vertical clearance above the mean regulated lake level of Lake Washington for the central 100 feet of the bascule span. The University of Washington football stadium is located on Montlake Boulevard about 300 yards north of the Montlake Bridge. The University of Washington and the Seattle Seahawks football teams use Husky Stadium, which has a maximum seating capacity of 78,000. The indoor stadium for basketball games is located just north of Husky Stadium. The same parking facilities are used for all games. Furthermore, the emergency entrance to the University of Washington Hospital is about the same distance north as Husky Stadium on the opposite side of Montlake Boulevard. The Montlake Bridge provides the closest crossing of the Lake Washington Ship Canal for ambulances. The canal bisects Seattle from east to west. About 300 yards south of the bridge, Montlake Boulevard has access to State Route 520, a major east-west highway that connects to Interstate 5 and 405. Practical alternate routes with similar capacity around the bridge do not exist.

Before and after games the traffic becomes extremely dense. Normal weekend traffic across the bridge is about 40,000 vehicles each day. Draw openings would aggravate congestion. Even on days without large public events, an opening of this bascule on the weekend can queue traffic for a mile to the north and a mile to the south. While the Lake Washington Ship Canal does bear some commercial navigation beneath the Montlake Bridge, most of the draw openings are for sailboats. Many of the tugs that operate on this part of the canal are able to pass under the drawbridge in its closed position.

From September 2000 through February 2001 the bridge opened on average 8 times on Saturday and 8 times on Sunday between the hours of 10 a.m. and 9 p.m. Since these are only the bracketing hours of the football periods, the number of openings that would be affected is actually less than 8 on average. In other words, the earliest start of a closed period (10 a.m.) is not utilized with the latest end time (9 p.m.) The morning and afternoon closed periods vary in duration but none is more than three hours. Therefore, the maximum daily affected period between 10 a.m. and 9 p.m. is 5.75 hours, not 11 hours. On average these public interest closures would affect two or three vessels at most. Most of the basketball games are in the evening hours and most of the closures for the basketball games are only for one hour. These closures have been authorized for many years and are known and expected by many local boaters and members of the marine industry in Seattle. The schedule has also been published in the Local Notice to Mariners prior to the first affected date so that vessel operators may plan accordingly.

This temporary final rule allows the bridge to remain closed to navigation during times of heavy traffic before and after the football and basketball games at the University of Washington.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1 paragraph (32)(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulation have been found to not have a significant effect on the environment. A writer ''categorical Exclusion Determination'' is not required for this temporary final rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U. S. C. 499; 49 CFR 1.46; 33 CFR 1.05–19g); section 117.255 also issued under the authority of Pub. L. 102–587, 106, Stat 5039

1. From November 5, 2001, until June 9, 2002, § 117.1051(e) is amended by adding a new paragraph (e)(4) to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(e) * * *

(4) The Montlake bridge need not open during the following dates and times:

12–Nov–01—9 p.m.–10 p.m.
17–Nov–01—10 a.m.–12:45 p.m.; 3 p.m.–6 p.m.
23–Nov–01—8 p.m.–9 p.m.; 10 p.m.–11 p.m.
24–Nov–01—3 p.m.–4 p.m.; 8 p.m.–9 p.m.
24–Nov–01—10 p.m.–11 p.m.
27–Nov–01—9 p.m.–10 p.m.
28–Nov–01—9 p.m.–10 p.m.
7–Dec–01—10:30 a.m.–1:15 p.m.; 3:30 p.m.–6:30 p.m.
7–Dec–01—10 p.m.–11 p.m.
9–Dec–01—5 p.m.–6 p.m.
11–Dec–01—9:30 p.m.–10:30 p.m.
20–Dec–01—9:30 p.m.–10:30 p.m.
21–Dec–01—9 p.m.–10 p.m.
26–Dec–01—10:45 a.m.–1:30 p.m.; 3:45 p.m.–6:45 p.m.
27–Dec–01—9:30 p.m.–10:30 p.m.
4–Jan–02—9 p.m.–10 p.m.
6–Jan–02—3 p.m.–4 p.m.
10–Jan–02—9 p.m.–10 p.m.
12–Jan–02—4 p.m.–5 p.m.
17–Jan–02—9 p.m.–10 p.m.
24–Jan–02—9 p.m.–10 p.m.
26–Jan–02—4 p.m.–5 p.m.
7–Feb–02—9 p.m.–10 p.m.
9–Feb–02—3 p.m.–4 p.m.
14–Feb–02—9 p.m.–10 p.m.
16–Feb–02—7 p.m.–8 p.m.
21–Feb–02—9 p.m.–10 p.m.
23–Feb–02—3 p.m.–4 p.m.
28–Feb–02—9 p.m.–10 p.m.
9–Jun–02—11 a.m.–2 p.m.; 4:30 p.m.–6 p.m.

Dated: November 5, 2001.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard, District.

[FR Doc. 01–29644 Filed 11–28–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[VT–021–1224a; A–1–FRL–7110–2]

Clean Air Act Final Approval of Operating Permits Program; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting full approval to the Clean Air Act (Act), Operating Permits Program of the State of Vermont (program). Vermont submitted its program for the purpose of complying with the Act's directive that states develop programs to issue operating permits to all major stationary sources and certain other stationary sources. EPA granted interim approval to Vermont's initial operating permit program on October 2, 1996. On September 28, 2001, EPA proposed full approval of Vermont's pending revised program, provided the state finalized the sections of its proposed rules that address EPA's interim approval conditions. On November 15, 2001, EPA received Vermont's adopted revisions to its program. The Agency has determined that Vermont has adequately addressed all interim approval conditions as described in EPA's proposed approval.

DATES: This rule is effective on November 30, 2001 without further notice.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. What Is EPA Approving?

EPA is taking final action to approve the changes Vermont made to its regulations (Environmental Protection Regulations, Air Pollution Control Chapter V, Definitions and Subchapter X) regarding the state's title V permitting program. The Agency is granting full approval to Vermont's title V permitting program because Vermont has made all the necessary changes to its program required by EPA's interim approval. Details of the state changes can be found in EPA's proposed rulemaking, 66 FR 49577 (September 28, 2001). EPA did not receive any comments on the proposed rulemaking. In the final adoption, the state legislative council made three minor changes to the proposed rule. These changes that do not effect the substance of the provisions EPA relied on when it proposed to grant full approval to Vermont's program. The exact changes the state made can be found as part of EPA's public record.

It should be noted that the state regulation, although fully adopted on November 14, 2001, and submitted to EPA on November 15, 2001, is not effective under state law until November 29, 2001. Vermont state law provides that state regulations ''take effect fifteen days after adoption is complete.'' V.S.A. t. section 845(d). This waiting period has no effect on the substance of the fully adopted state regulation that EPA is approving, nor on EPA's authority to sign this action approving the adopted program.

Unlike the prior interim approval, this full approval has no expiration date. However, the state may revise its program as appropriate in the future by following the procedures of 40 CFR 70.4(i). EPA may also exercise its oversight authority under section 502(i) of the Act to require changes to a state's program consistent with the procedures of 40 CFR 70.10.

II. What Is the Effective Date of EPA's Full Approval of the Vermont Title V Program?

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the state's program effective on November 30, 2001. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. EPA's interim approval of Vermont's prior program expires on December 1, 2001. In the absence of this full approval of Vermont's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Vermont and would remain in place until the effective date of the fully-approved state program. EPA believes it is in the public interest for sources, the public and the state to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because Vermont has been administering the title V permit program for 5 years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

III. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing state operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve state programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a state program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on November 30, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 21, 2001.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by revising the entry for Vermont to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Vermont

(a) Department of Environmental Conservation: submitted on April 28, 1995; interim approval effective on November 1, 1996; revised program submitted on November 15, 2001; full approval effective November 30, 2001.

(b) [Reserved]

* * * * *

[FR Doc. 01–29653 Filed 11–28–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI18

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the Carson Wandering Skipper as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), exercise our emergency authority to list the Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) in California and Nevada as endangered under the Endangered Species Act of 1973, as amended (Act). The Carson wandering skipper is currently known from only two populations, one in Washoe County, Nevada, and one in Lassen County, California. The subspecies is found in grassland habitats on alkaline substrates.

Extinction could occur from naturally occurring events or other threats due to the small, isolated nature of the remaining populations of the Carson wandering skipper. These threats include habitat destruction, degradation, and fragmentation due to agricultural practices (such as excessive livestock grazing and wetland habitat modification), urban development, and non-native plant invasion. Other threats include collecting, livestock trampling, water exportation projects, road construction, recreation, pesticide drift, and inadequate regulatory mechanisms. We find these threats constitute immediate and significant risk to the Carson wandering skipper.

This emergency rule provides Federal protection pursuant to the Act for the Carson wandering skipper for a period of 240 days. A proposed rule to list the Carson wandering skipper as endangered is published concurrently with this emergency rule in this issue of the **Federal Register** in the proposed rule section.

DATES: This emergency rule becomes immediately effective November 29, 2001 and expires July 29, 2002.

ADDRESSES: The complete file for this emergency rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section; telephone 775/861–6300; facsimile 775/861–6301), or Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825–1846 (telephone 916/414–6000; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Background

The genus *Pseudocopaeodes* in the family Hesperiidae and subfamily Hesperiinae (grass skippers) contains only one species, *Pseudocopaeodes eunus.* Members of Hesperiidae are called skippers because of their powerful flight. While their flight may be faster than other butterflies, they

seldom fly far and few species migrate (Scott 1986).

The species *Pseudocopaeodes eunus* consists of five subspecies. The Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) is locally distributed in grassland habitats on alkaline substrates in eastern California and western Nevada. *Pseudocopaeodes eunus eunus* is located in western desert areas of southern California; *Pseudocopaeodes eunus alinea* is found in eastern desert areas of southern California and in southern Nevada; and *P. eunus flavus* is found in western and central Nevada (Brussard 2000). In 1998, what is believed to be an undescribed fifth subspecies of *P. eunus* was found in Mono County, California. Efforts to formally describe this fifth subspecies are being conducted by Mr. George Austin of the Nevada State Museum and Historical Society in Las Vegas, Nevada (Brussard 2000). Except for the Carson wandering skipper, none of these other subspecies of *P. eunus* have common names.

The Carson wandering skipper was collected in 1965 by Peter Herlan, Nevada State Museum, at a location north of U.S. Highway 50, Carson City, Nevada. It was first described by George Austin and John Emmel (1998), based on 51 adult specimens. The body is tawny orange above except for a narrow uniform border and black veins near the border at the outer edge of the wing. The upper forewing and hindwing are orange with darker smudging. The lower surface of the hindwings is pale creamy orange with two creamy rays extending form the base of the wing to its margin. There may be dusky suffusions along the wing veins (Howe 1975). Males tend to average 13.1 millimeters (mm) (0.52 inches (in)) in size (ranging from 12.0–13.9 mm (0.47–0.55 in)). Females average 14.7 mm (0.58 in) in size, and range from 13.4–15.6 mm (0.53–0.61 in). The female's dorsum (upper surface) is similar to the male's but with heavier dusting on the discal (relating to a disk) area of the hindwing. The female's venter (undersurface of the abdomen) is similar in appearance to the male's.

The Carson wandering skipper can be distinguished from the other subspecies of *Pseudocopaeodes eunus* by a combination of several characteristics. The Carson wandering skipper is browner and less intensely orange on its dorsal surface (the insect's back), with thicker black coloring along the veins, outer margin, and on both basal surfaces; and it is duller, overall, with an expanse of bright yellow and orange ground color, especially on the ventral surface, interrupted by broadly darkened veins (Austin and Emmel 1998).

Carson wandering skipper females lay their cream-colored eggs on salt grass (*Distichlis spicata* var. *stricta*), the larval host plant for the subspecies (Scott 1986). This is a common plant species in the saltbush-greasewood community of the intermountain west. Salt grass usually occurs where the water table is high enough to keep its roots saturated for most of the year (West 1988, as cited in Brussard *et al.* 1998).

No other observations have been made of the early life stages of the Carson wandering skipper. However, the Carson wandering skipper's life cycle is likely similar to other species of Hesperiinae. Larvae (immature, wingless, often worm-like form) of the subfamily Hesperiinae live in silked-leaf nests, and some species make their nests partially underground. Larvae are usually green or tan and have a dark head and black collar. Pupae (intermediate stage between larvae and adult) generally rest in the nest, and larvae generally hibernate (Scott 1986). Some larvae may be able to extend their period of diapause (period of dormancy) for more than one season depending on the individual and environmental conditions (Dr. Peter Brussard, University of Nevada, Reno, pers. comm., 2001). Carson wandering skippers may differ from other *Pseudocopaeodes eunus* in producing only one brood per year during June to mid-July (Austin and Emmel 1998). The other subspecies produce a second brood in late July to late September (Austin and Emmel 1998). Additional research is needed to confirm that the Carson wandering skipper produces only one brood per year, however.

Little is known about the specific habitat requirements of the Carson wandering skipper beyond the similarities recognized among known locations of this subspecies. As a result, the habitat requirements stated could apply to the species as a whole (Brussard *et al.* 1999). Habitat requirements for butterflies in general include: (1) Presence of a larval host plant; (2) appropriate thermal environment for larval development and diapause, and adult mate location and oviposition (to lay eggs); and (3) a nectar source (Brussard *et al.* 1999). Based on commonalities of known, occupied sites, suitable habitat for the Carson wandering skipper has the following characteristics: elevation of less than 1,524 meters (5,000 feet); located east of the Sierra Nevada; presence of salt grass; open areas near springs or water; and geothermal activity.

There are no data in the literature on the micro-habitat requirements of the Carson wandering skipper (Brussard *et al.* 1999). However, it is likely that suitable larval habitat is related to the water table. Many salt grass areas are inundated in the spring, and larvae do not develop under water. During wet years, larval survival depends on salt grass areas being above standing water. In dry years, survival is probably related to the timing of the host plant senescence (aging). Therefore, micro-topographic variation (slight irregularities of a land surface) is probably important for larval survival because it provides a greater variety of appropriate habitat over time (Brussard *et al.* 1999). Since the few historic collections of the Carson wandering skipper have been near hot springs, it is possible this subspecies may require the higher water table or ground temperatures associated with these areas (Brussard *et al.* 1999) to provide the appropriate temperatures for successful larval development (Brussard *et al.* 1999).

Adult Carson wandering skippers require nectar for food. Few plants that can serve as nectar sources grow in the highly alkaline soils occupied by salt grass. For a salt grass area to be appropriate habitat for the Carson wandering skipper, an appropriate nectar source must be present and in bloom during the flight season. Plant species known to be used by the Carson wandering skipper for nectar include a mustard (*Thelypodium crispum*), racemose golden-weed (*Pyrrocoma racemosus*), and slender birds-foot trefoil (*Lotus tenuis*) (Brussard *et al.* 1999). If alkaline-tolerant plant species are not present, but there is a fresh-water source to support alkaline-intolerant nectar sources adjacent to the larval host plant, the area may provide suitable habitat (Brussard *et al.* 1999).

No information is available on historic population numbers of the Carson wandering skipper. It is possible that a fairly large population of the subspecies occurred from the Carson Hot Springs site to the Carson River. Outflow from the springs likely supported a water table high enough to support salt grass and a variety of nectar sources. Urban development, water diversions, and wetland manipulations have eliminated most of the habitat type in this area (Brussard 2000).

Likewise, it is possible that appropriate habitat once existed for the Carson wandering skipper between the existing populations in Lassen County, California, and Washoe County, Nevada (P. Brussard, pers. comm., 2001). The population locations are approximately

120 kilometers (km) (75 miles (mi)) apart, and while the dispersal capability of the Carson wandering skipper is unknown, it is unlikely that any current genetic exchange occurs between the two populations. Over time, the habitat between the two populations has become unsuitable and fragmented due to agriculture and development, and the two populations have become isolated from one another. The subspecies likely represents a remnant of a more widely distributed complex of populations in the western Lahontan basin (Brussard *et al.* 1999).

Population Sites

Historically, population locations included the type locality found near the Carson Hot Springs in Carson City, Douglas County, Nevada, and one other site in Lassen County, California. When described in Austin and Emmel (1998), specimens from two additional sites, Dechambean Hot Springs at Mono Lake and Hot Springs, Mono County, were assigned, with uncertainty due to their small numbers, to the Carson wandering skipper subspecies. Based on 1998 surveys (Brussard *et al.* 1999), these Mono County specimens would be more appropriately assigned to the currently undescribed subspecies (George Austin, Nevada State Museum and Historical Society, pers. comm., 2001).

Surveys conducted in 1998 throughout potential, suitable habitat in Nevada and California found two new nectar sites occupied by the Carson wandering skipper. One site was located in Washoe County, Nevada, and the other site (two locations) was found in Lassen County, California. The site in Lassen County could be a rediscovery of the area where skippers were collected in the 1970s; however, the collection record is too vague to be certain (P. Brussard, pers. comm., 2001). Despite additional, more limited attempts at finding other populations in 2000 and 2001, none have been found (P. Brussard, pers. comm., 2000; Rebecca Niell, University of Nevada-Reno (UNR), pers. comm., 2001).

Carson City, Douglas County Site

The Carson City site was surveyed for the Carson wandering skipper by the UNR from 1997 to 2001. Only five individuals (four males and one female) were observed during surveys in June 1997. One possible sighting of a Carson wandering skipper occurred at a project site in 1998 (Brussard *et al.* 1999). No individuals were observed at this site in 1999 or in 2000 (P. Brussard, pers. comm., 2000). In 2001, searches were again conducted with no individuals observed (R. Niell, pers. comm., 2001). Habitat changes resulting from drainage manipulations for residential and commercial development are likely responsible for this possible extirpation (Brussard *et al.* 1999). Construction of a freeway bypass will eliminate and fragment the remaining habitat (5 ha (12 ac)) of the Carson wandering skipper at this site.

An area just south of the Carson Hot Springs site was also surveyed in 1997 and 1998. Twelve hectares (ha) (30 acres (ac)) of potential habitat were present (Paul Frost, NDOT, *in litt.* 1998), however, no Carson wandering skippers were found during the surveys (Brussard *et al.* 1999). Approximately 5 ha (12 ac) of this potential habitat will be impacted by the construction of the Carson Highway 395 bypass (Alan Jenne, Nevada Department of Transportation (NDOT), pers. comm., 2001).

Because of habitat degradation and fragmentation, the Carson wandering skipper has probably been extirpated from the Carson Hot Springs site.

Washoe County Site

The nectar site in Washoe County occurs on Bureau of Land Management (BLM) administered lands and adjacent private lands. This nectar site is estimated to be about 10 to 12 ha (25 to 30 ac), with approximately half of the site occurring on BLM lands and half on private lands (Brussard *et al.* 1999). The nectar source at this site (racemose golden-weed) is abundant, as is salt grass. A few Carson wandering skippers were seen approximately 1.6 km (1 mi) northeast of the nectar site. This suggests the Carson wandering skipper may occur in small numbers elsewhere in the valley (Brussard *et al.* 1999). Surveys were not conducted in 1999 or 2000 at this site. In 2001, searches of this area were made to confirm the Carson wandering skipper's presence. Five individuals were found at the nectar site on BLM lands; private lands were not searched (Virginia Rivers, Truckee Meadows Community College, pers. comm., 2001).

Lassen County Site

The new site found in 1998 in Lassen County, California, occurs on public lands (one location) managed by the California Department of Fish and Game (CDFG) and private lands (one location). In 1998, two individuals were observed on the public lands, while several individuals were observed at a nectar site less than 2 ha (5 ac) in size on the private lands. UNR did not conduct surveys at this site in 1999. Surveys were conducted in 2000, and, while several individuals were seen on the private property nectar site location, none were seen on the public lands. Salt grass is abundant in this area but the attraction appears to be the nectar source, which is slender birds-foot trefoil. In 2001, searches were conducted to confirm the Carson wandering skipper's presence. A few sightings (three one day and four on another day) were observed on the private property nectar site, but again, none were observed on the nearby public lands (V. Rivers, pers. comm., 2001).

In 1998, collections of four of the *Pseudocopaeodes eunus* subspecies were made for a genetic study. In addition to collections made of the Carson wandering skipper at the Washoe County site (24) and the Lassen County site (25) by UNR researchers, individuals of three other *P. eunus* subspecies (173) were also collected. *Pseudocopaeodes eunus eunus* individuals were not collected due to their scarcity. Genetic analysis was based on an analysis of allozyme (i.e., protein) variation (Brussard *et al.* 1999). Levels of heterozygosity (genetic variability) were low in all but two populations of *P. eunus*, and the average heterozygosity over the nine populations was also low. The low levels of heterozygosity in many of the populations is likely due to repeated extirpation events, recolonizations, and population and genetic bottlenecks throughout the Holocene geologic period to present time (Brussard *et al.* 1999).

Previous Federal Action

On May 22, 1984, we published an invertebrate wildlife Notice of Review in the **Federal Register** (49 FR 21664) designating *Pseudocopaeodes eunus eunus* as a category 2 candidate. Category 2 candidates were those species for which we had information indicating that listing may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. The population known as the Carson wandering skipper was included in *P. eunus eunus*; however, in early 1995, we were informed by Mr. George Austin that the Carson wandering skipper was a distinct subspecies, not yet described (G. Austin, pers. comm., 1995). On February 28, 1996, the designation of category 2 species as candidates for listing under the Act (61 FR 7596) was discontinued.

Following an updated assessment of the status of the Carson wandering skipper and its increased vulnerability to threats in 1998, we included this taxon as a candidate species in the

Notice of Review published in the **Federal Register** on October 25, 1999 (64 FR 57533).

On November 10, 2000, we received a petition dated November 9, 2001, from Mr. Scott Hoffman Black, Executive Director, The Xerces Society, to emergency list the Carson wandering skipper as an endangered species throughout its range, and to designate critical habitat concurrent with the listing. We responded in a letter dated February 20, 2001, that we would not publish a petition finding for the Carson wandering skipper because it was already listed as a candidate species in the most recent Notice of Review (64 FR 57533). This meant that we had already determined that its listing was warranted. We indicated we would continue to monitor the status of the Carson wandering skipper, and if an emergency listing was warranted, we would act accordingly, or list the species when not precluded by higher priorities.

In addition, the petitioner requested emergency listing of the entire species. We responded in our February 20, 2001, letter to the petitioner that we did not believe that an emergency situation existed at the time for the remaining subspecies, other than the Carson wandering skipper. Surveys for *Pseudocopaeodes eunus* spp. were conducted in 1998 throughout potential, suitable habitat in Nevada and California (Brussard *et al.* 1999). Of the 78 sites (48 new; 30 historic) visited, *P. eunus* spp. were found at 14 sites. Of the 30 historic sites, *P. eunus* spp. were found at 8 sites. Seven areas (2 in Nevada; 5 in California) which were historic sites for this species were not visited. We conducted additional status surveys in 2001 for these other subspecies of *P. eunus*, and results of these surveys are pending. These surveys will assist in more appropriately determining their status. If our ongoing status review indicates a listing of the remaining subspecies is warranted, we will act accordingly.

On August 28, 2001, the Service reached an agreement with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society to complete work on a number of species proposed for listing. Under this agreement, we will issue several final listing decisions, propose a number of other species for listing, and we will review three species for emergency listing, including the Carson wandering skipper (Center for Biological Diversity, *et al.* v. Norton, Civ. No. 01–2063 (JR) (D.D.C.), entered by the Court on October 2, 2001).

Summary of Factors Affecting the Species

Section 4 of the Act and the regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to Carson wandering skipper are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary cause of the decline of the Carson wandering skipper is loss of salt grass and wetland habitats from human activities, primarily agricultural uses and development. This includes habitat fragmentation, degradation, and loss due to agricultural uses (such as livestock over-grazing and wetland habitat modification), urban development, non-native plant invasion, road construction, water exportation projects with their subsequent change in water table levels and plant composition, and recreation. Threats at each known or historic site are discussed below.

Carson City, Douglas County Site

Habitat at the original Carson City site has been greatly modified over time, and most of it was destroyed by construction of a shopping center (Brussard *et al.* 1999). Several years later, an extension of this population was discovered north of the original location (Brussard *et al.* 1999). The current site includes about 10 ha (24.7 ac) of known and potential Carson wandering skipper habitat (P. Frost, *in litt.* 1998). Collections were made at this site from the late 1960s through the early 1990s, though population numbers were small (Austin and Emmel 1998; Brussard *et al.* 1999). In the 1990s, additional urban development further reduced the remaining habitat, and the site is now completely surrounded by development. Adult Carson wandering skippers have not been observed at this location since 1997.

The Carson wandering skipper has likely been extirpated from the Carson City site due to development and habitat changes resulting from drainage manipulations for residential and commercial development (Brussard *et al.* 1999). Not only has direct loss of habitat occurred, but adjacent development appears to have also impacted the groundwater table, and the salt grass community is being invaded with non-native, upland species such as cheatgrass (*Bromus tectorum*). Adjacent lands surrounding this site will continue to be developed for commercial and residential use.

The remaining habitat at the type locality will also be fragmented or destroyed by construction of a freeway bypass and associated flood control facilities being planned by the NDOT. The bypass was approved and the right-of-way corridor was purchased several years ago. At the time, this was the only known site occupied by the Carson wandering skipper. The only suitable nectar source available during the Carson wandering skipper's flight season at this site was the native mustard, *Thelypodium crispum* (Brussard *et al.* 1999). Construction of the bypass began in 2000 and impacts to Carson wandering skipper habitat will likely occur in 2002 (Julie Ervin-Holoubek, NDOT, pers. comm., 2001). The alignment will impact approximately 2.4 ha (6 ac) of previously occupied habitat and about 8 ha (20 ac) of the potential habitat remaining at both areas north and south of U.S. 50 (P. Frost, *in litt.* 1998). According to Brussard (2000) this will leave inadequate habitat to support a restored population.

Habitat loss and modifications of the Carson City site have also occurred due to the construction of a wetland mitigation area in the early 1990s to mitigate for wetlands lost approximately 0.8 km (0.5 mi) southwest of this site. This site is located in a highly developed area, with recreational use by walkers and bikers in the remaining open area. The U.S. Army Corps of Engineers (Corps) issued a section 404 permit on March 10, 1993, for a residential housing and golf course project, impacting about 2 ha (5 ac) of wetlands. Mitigation for these impacts involved the creation of 9 ha (22 ac) of intermittent, seasonal, and semi-permanent wetlands adjacent to the existing wetlands (Robert W. Junell, Corps, *in litt.* to Charles L. Macquarie, Lumos and Associates, Inc. 1993; Lumos and Associates, Inc. 1993). To date, this mitigation site has not met its objectives to provide high-value urban wetlands and enhance wetland function (Nancy Kang, Corps, *in litt.* to Dwight Millard, J.F. Bawden and Stanton Park Development 2001).

Washoe County Site

Threats at the Washoe County site include excessive livestock grazing and trampling, residential development, increased potential recreational use, such as by off-road vehicles (ORV), a proposed water export project, and impacts associated with pesticide drift.

Current grazing practices on BLM-administered lands at the Washoe County site allow for a November to March grazing season. Although this season of use avoids impacts to adult Carson wandering skipper nectar sources and salt grass during spring and summer, high livestock densities can cause larval mortality through trampling during the winter. On adjacent private lands, cattle densities and timing are not regulated, and cattle have access to nectar sources during the Carson wandering skipper's flight season. While the level of grazing on salt grass has not been measured at this site, cattle readily utilize this dominant forage species (Walt DeVaurs, BLM, pers. comm., 2001).

Residential development is occurring in the area surrounding the Washoe County site. Increases in domestic wells could impact the water table in the area, resulting in changes to the salt grass community in the valley. As this area becomes more populated, fragmentation and degradation of the Carson wandering skipper's habitat is expected to increase through development and recreational activities. Also, public lands will likely see additional recreational use as the area becomes more developed.

The Nevada State Engineer's Office recently approved change-in-use applications (agricultural to municipal and industrial use) (Hugh Ricci, Nevada Department of Conservation and Natural Resources, Division of Water Resources, *in litt.* 2001) for a private landowner plan to export water from this valley to a neighboring one. This project will involve the collection of up to 2,900 acre-feet per year of surface and ground water through a system of ditches, natural channels, diversion structures, collection facilities, and recovery wells. The recovered water will be treated and exported via pipeline to a neighboring valley (Stantec Consulting, Inc. 2000). Implementation of this project could result in the lowering of the water table in the valley and loss of the salt grass community upon which the Carson wandering skipper population at this site depends. In addition, the construction of facilities could result in direct impacts to Carson wandering skipper habitat in the valley.

Another potential threat is pesticide drift from alfalfa fields located adjacent to the occupied nectar site. Pesticides are used to control pests such as aphids, cutworms, grasshoppers, and mites (Carpenter *et al.* 1998.). Pesticide drift from these fields to the nectar site could eliminate a large part of the Carson wandering skipper population (Brussard 2000).

Lassen County Site

Threats at the Lassen County site include the invasion of the non-native plant species tall whitetop (*Lepidium latifolium*), and excessive livestock grazing on host plants and trampling of larvae. A water development project, affecting the ground water table, is also of concern.

Whitetop, which was first noted in 2000, has encroached onto the nectar site on private property and has become established in patches of slender birds-foot trefoil, this site's nectar source. Whitetop is a perennial native to Europe and Asia which grows in disturbed sites, wet areas, ditches, roadsides, and cropland. Spreading roots and numerous seeds make this plant difficult to control (Stoddard *et al.* 1996). While visits during 2001 showed no further advancement of whitetop into the nectar site (V. Rivers, pers. comm., 2001), the surrounding countryside, including both public and private lands, is severely infested. Failure to control this invasive species could quickly result in the loss of this small nectar site. Depending on the control methods used (herbicide treatments or mechanical means) and timing, efforts to control this plant species could also impact the Carson wandering skipper population and its habitat at this site.

Cattle have access to the Lassen County site; however, it is unknown at this time what management scenarios are being implemented. As at the Washoe County site, timing of use and densities of livestock can affect the availability of nectar sources and larval survival.

Additional potential threats include attempts to export water from the area to other locations. In 1991, the Nevada State Engineer approved exportation of 13,000 acre-feet of groundwater per year from Honey Lake Valley, in Lassen and Washoe Counties to Lemmon and Spanish Springs Valleys, Washoe County. In 1993, a draft Bedell Flat Pipelines Rights-of-Way, Washoe County, Nevada Environmental Impact Statement was prepared (BLM 1993). If this project, or other similar projects, are implemented, lowering of the water table could occur and result in changes to the salt grass community upon which the Carson wandering skipper depends.

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Rare butterflies and moths are highly prized by collectors, and an international trade exists for insect specimens for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (Morris *et al.* 1991; Williams 1996). The specialist trade differs from both the live and decorative market in that it concentrates on rare and threatened species (U.S. Department of Justice 1993). In general, the rarer the species, the more valuable it is, and prices may exceed US $2,000 for rare specimens (Morris *et al.* 1991).

Simply listing a species can result in an increase in commercial or scientific interest, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection for scientific and/or commercial purposes. The listing of species as threatened or endangered publicizes their rarity and may make them more susceptible to collection by researchers or other interested parties. Even limited collection pressure on small populations can have adverse impacts on their viability.

While there have been no studies on the impact of the removal of individuals from natural populations for this subspecies, it is possible that the Carson wandering skipper has been adversely affected. At the Carson City site, individuals of the Carson wandering skipper are known to have been collected for personal butterfly collections during the late 1960s until the early 1990s, though populations were small (Austin and Emmel 1998; Brussard *et al.* 1999). From 1965 to 1989, at least 86 males and 90 females were collected during 7 different years by various collectors (Austin and Emmel 1998). During this time, this was the only known site on which Carson wandering skipper occurred. The Carson wandering skipper is now believed to have been extirpated from the site. While habitat degradation and loss have occurred at this site, collecting may have also contributed to this extirpation.

In 1998, Carson wandering skipper was collected at the Washoe County and Lassen County sites by UNR researchers for genetic analysis. Only males were collected, and these were taken late in the flight season to minimize impacts to the population (Brussard *et al.* 1999).

The two populations of Carson wandering skipper that remain could face strong pressure from collectors. Since the nectar sites occur along public roadsides, the subspecies is easily accessible, and the limited number and distribution of these populations make this subspecies vulnerable to collectors. Even limited collection from the small populations of Carson wandering skipper could have deleterious effects on its viability and lead to the eventual extinction of this subspecies.

C. *Disease or predation.* Disease is not known to be a factor affecting this subspecies at this time.

Cattle grazing, as discussed under Factor A, is a threat to the species due to grazing impacts to adult nectar sources and the larval host plant. Livestock can also trample the salt grass, causing direct mortality of diapausing larvae. Predation by other species, such as birds or insects, on larvae or adult Carson wandering skippers is likely, but it is unknown how this may affect the population's viability.

D. *The inadequacy of existing regulatory mechanisms.* The Carson wandering skipper occurs on Federal, State, and private lands. Existing regulatory mechanisms do not fully protect this subspecies or its habitats on these lands. Existing regulatory mechanisms that may provide some protection for the Carson wandering skipper include: (1) Federal laws and regulations including the Clean Water Act (CWA); and (2) State laws including the California Environmental Quality Act (CEQA).

Federal Laws and Regulations

The Carson wandering skipper appears to be closely associated with wetland habitats. Current regulatory mechanisms, such as section 404 of the CWA, have not precluded development and alteration of these habitats. Section 404 regulations require that applicants obtain a permit from the Corps for projects that place fill material into waters of the United States. Whether an individual or nationwide permit may be required depends upon the activity and the amount of fill proposed. Regulatory mechanisms addressing alterations to stream channels, riparian areas, springs and seeps from various activities such as agricultural activities, development, and road construction have been inadequate to protect the Carson wandering skipper habitat in Nevada and California.

Until publication of this emergency rule, we considered the Carson wandering skipper a candidate species; this designation carries no formal Federal protection under the Act.

Some protection is afforded to the Carson wandering skipper on lands administered by the BLM at the Washoe County site due to their commitment to assist in the conservation of this subspecies through the Cooperative Agreement (CA) signed in 1999. This CA was signed by the Service, NDOT, the Federal Highway Administration (FHWA), and BLM in October 1999. It was developed to outline the actions necessary for the conservation and management of the Carson wandering skipper. Development of a conservation plan was one activity outlined by the agreement. UNR was contracted by NDOT to prepare a draft conservation plan, which was prepared by UNR in 2000. Additional biological information and agency commitment are needed before this plan can be finalized. However, since signing the CA in 1999, BLM has designated 98 ha (243 ac) of their lands at the Washoe County site as an Area of Critical Environmental Concern. This designation allows BLM discretion in determining actions which can occur within this area (BLM 2001). However, these protections only cover a portion of Carson wandering skipper habitat in the area and are insufficient to protect the species throughout the site.

State Laws and Regulations

Although California State laws may provide a measure of protection to the subspecies, these laws are not adequate to protect the Carson wandering skipper and ensure its long-term survival. CEQA pertains to projects on non-Federal lands and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. Section 15065 of the CEQA Guidelines requires a ''finding of significance'' if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal'' including those that are eligible for listing under CESA. However, under CEQA, where overriding social and economic considerations can be demonstrated, a project may go forward despite significant adverse impacts to a species.

The California Natural Diversity Data Base classifies the Carson wandering skipper as a S1S3 species, which identifies this subspecies as one that is extremely endangered with a restricted range within California (California Natural Diversity Data Base 2001). This designation provides no legal protection in California. The CDFG is unable to protect insects under its current regulations (Pete Bontadelli, CDFG, *in litt.* 1990).

In Nevada, there are no local or State regulations protecting the Carson wandering skipper on State or non-Federal lands. The Nevada Natural Heritage Program ranks the Carson wandering skipper as S1, meaning it is considered in the State of Nevada as critically imperiled due to extreme rarity, imminent threats, or biological factors (Nevada Natural Heritage Program 2000). This designation provides no legal protection in Nevada. The Nevada Division of Wildlife is unable to protect insects under its current regulations (Nevada Revised Statutes 1999).

E. *Other natural or manmade factors affecting its continued existence.* This subspecies is highly susceptible to extinction as a result of naturally occurring stochastic (random or chance variables) environmental or demographic events because the Carson wandering skipper occurs at only two known isolated locations and in small numbers. These events may be wildfire, increase in disease or predation, or severe weather events such as flooding. Additionally, random demographic effects (e.g., skewed sex ratios) and loss of genetic variability may result in individuals and populations being less able to cope with environmental change, and could cause the loss of one or both of the populations.

In addition, the loss of habitat compromises the ability of the Carson wandering skipper to disperse. Populations remain isolated with no opportunity to migrate or recolonize if conditions become unfavorable.

A wetlands mitigation bank is being established near the Lassen County site. It is located adjacent to existing CDFG lands. This parcel of land has been recently grazed and farmed. The bank is intended to create a minimum of 37 ha (92 ac) of emergent wetlands at this site to mitigate for wetland losses in sagebrush scrub and juniper woodland habitats due to road construction in Lassen and Modoc counties, and the eastern portion of Plumas County. This bank will be managed by CDFG (California Department of Transportation (CalTrans) and CDFG 1998). The site has not been surveyed for the Carson wandering skipper, but potential habitat exists. Depending upon the location of constructed wetlands, loss of Carson wandering skipper habitat could occur. We will continue to work with CalTrans and CDFG regarding implementation of this bank in consideration of the Carson wandering skipper.

Reasons for Emergency Determination

Under section 4(b)(7) of the Act, and regulations at 50 CFR 424.20, we must consider development of an emergency rule to list a species if threats to the species constitute an emergency posing significant risk to its continued survival. Such an emergency listing expires 240 days following publication in the **Federal Register** unless, during the 240-day period, we list the species through our normal listing procedures. We discuss below the reasons why emergency listing of the Carson wandering skipper as endangered is necessary. In accordance with the Act,

we will withdraw this emergency rule if, at any time after its publication, we determine that substantial evidence does not exist to warrant such a rule.

The immediate concerns for the Carson wandering skipper are associated with the extremely small number of populations, habitat fragmentation, and significant decrease in its historical range in Nevada and California. While historic population numbers are not known, current population sizes at the two locations appear small. As discussed in the Summary of Factors Affecting the Species, a number of threats face the subspecies. These include habitat destruction, degradation, and fragmentation due to agricultural uses (such as excessive livestock grazing and wetland habitat modification), and non-native plant invasion. Other immediate threats include impacts from collecting, livestock trampling, pesticide drift, and inadequate regulatory mechanisms. Another threat is the approved and proposed water exportation projects. These projects could severely impact Carson wandering skipper habitat through lowering of the water table, and degrading or eliminating the salt grass community upon which the Carson wandering skipper depends.

This subspecies is also vulnerable to chance environmental or demographic events, to which small populations are particularly vulnerable. The combination of only two populations, small range, and restricted habitat makes the subspecies highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1981, 1987; Meffe and Carroll 1994). Such events are not usually a concern until the number of populations or geographic distribution become severely limited, as is the case with the subspecies discussed here. Once the number of populations or the population size is reduced, the remnant populations, or portions of populations, have a higher probability of extinction from random events (Primack 1993).

Because the Carson wandering skipper remains at only two known locations, and because both locations are subject to various immediate, ongoing, and future threats as outlined above, we find that the Carson wandering skipper is in imminent danger of extinction throughout all or a significant portion of its range and warrants immediate protection under the Act. Emergency listing the Carson wandering skipper as endangered will increase the regulatory protections and resources available to the subspecies.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the—(i) specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. Our implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

Because information relevant to the specific biological needs of the Carson wandering skipper is not currently available, we are unable to adequately perform the analysis required to designate critical habitat. Therefore, we find that critical habitat for the Carson wandering skipper is not determinable at this time. We are also concerned that the designation of critical habitat could increase the degree of threat to the species through collecting or from intentional habitat degradation. In the Public Comments Solicited portion of the proposed rule published concurrently with this emergency rule, we specifically solicit information on potential critical habitat, biological information, and information that would aid our prudency analysis. When a ''not determinable'' finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent.

We will protect the Carson wandering skipper and its habitat through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the subspecies, through the recovery process, through enforcement of take prohibitions under section 9 of the Act, and through the section 10 process for activities on non-Federal lands with no Federal nexus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, development of recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for listed species. We discuss the protection required of Federal agencies, considerations for protection and conservation actions, and the prohibitions against taking and harm for the Carson wandering skipper, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed to be listed or is listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Federal agencies are required to confer with us informally on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species, or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Federal agency actions that may require consultation include, but are not limited to, those within the jurisdictions of the Service, BLM, Corps, FHWA, and Natural Resources Conservation Service.

We believe that protection and recovery of the Carson wandering skipper will require reduction of the threats from habitat destruction, degradation, and loss of salt grass and wetland habitats due to excessive livestock grazing, development, water exportation projects, non-native plant invasion, and road construction. Threats from collection, livestock trampling, pesticide drift, and recreation must also be reduced. These threats should be considered when management actions are taken in habitats currently and potentially occupied by the Carson wandering skipper, and areas deemed important for dispersal, and connectivity or corridors between known locations of this subspecies. Monitoring should also be undertaken for any management actions or scientific investigations designed to address these threats or their impacts.

Listing the Carson wandering skipper provides for the development and implementation of a recovery plan for the subspecies. This plan will bring together Federal, State, and regional agency efforts for conservation of the subspecies. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site-specific management actions necessary to achieve conservation and survival of the subspecies.

Listing will also require us to review any actions that may affect the Carson wandering skipper for lands and activities under Federal jurisdiction, State plans developed pursuant to section 6 of the Act, scientific investigations of efforts to enhance the propagation or survival of the subspecies, pursuant to section 10(a)(1)(A) of the Act, and conservation plans prepared for non-Federal lands and activities pursuant to section 10(a)(1)(B) of the Act.

Federal agencies with management responsibility for the Carson wandering skipper include the Service, in relation to Partners for Fish and Wildlife projects and issuance of section 10(a)(1)(B) permits for habitat conservation plans, and other programs. Other activities on BLM lands could include livestock grazing and associated management activities, sale, exchange, or lease of Federal land containing suitable habitat, recreational activities, or issuance of right-of-way permits for various projects across lands administered by them. Occurrences of this subspecies could potentially be affected by projects requiring a permit from the Corps under section 404 of the CWA. The Corps is required to consult on permit applications they receive for projects that may affect listed species. Highway construction and maintenance projects that receive funding from the FHWA would be subject to review under section 7 of the Act. Activities authorized under the Natural Resources Conservation Service's Emergency Watershed Protection program, such as fire rehabilitation projects, would also be subject to section 7 review. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the subspecies' range. We believe the following actions would not be likely to result in a violation of section 9:

(1) Possession, delivery, including interstate transport and import or export from the United States, involving no commercial activity, of dead Carson wandering skipper that were collected prior to the date of publication of this emergency listing rule in the **Federal Register**;

(2) Any actions that may affect the Carson wandering skipper that are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act;

(3) Any action taken for scientific research carried out under a recovery permit issued by the Service pursuant to section 10(a)(1)(A) of the Act; and

(4) Land actions or management carried out under a habitat conservation plan approved by the Service pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement.

Activities that we believe could potentially result in a violation of section 9 include, but are not limited to:

(1) Unauthorized possession, trapping, handling, or collecting of Carson wandering skipper. Research efforts involving these activities will require a permit under section 10(a)(1)(A) of the Act;

(2) Possession, sale, delivery, carriage, transportation, or shipment of illegally taken Carson wandering skipper;

(3) Activities authorized, funded, or carried out by Federal agencies that may affect the Carson wandering skipper, or its habitat, when such activities are not conducted in accordance with the consultation requirements for listed species under section 7 of the Act; and

(4) Activities (*e.g.,* habitat conversion, excessive livestock grazing, farming, road and trail construction, water development, recreation, development, and unauthorized application of herbicides and pesticides in violation of label restrictions) that directly or indirectly result in the death or injury of adult Carson wandering skippers, or their larvae or eggs, or that modify Carson wandering skipper habitat and significantly affect their essential behavioral patterns including breeding, foraging, sheltering, or other life functions. Otherwise lawful activities that incidentally take Carson wandering skipper, but have no Federal nexus, will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities risk violating section 9 should be directed to the Field Supervisor of the Nevada Fish and Wildlife Office or the Field Supervisor of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and general inquiries regarding prohibitions and issuance of permits under the Act, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E.

11th Ave., Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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 existing OMB control number is 1018–0093 and expires 3/31/2004.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this emergency rule is Marcy Haworth, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), add the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Skipper, Carson wandering.	Pseudocopaeodes eunus obscurus.	U.S.A. (CA, NV)	U.S.A., (Lassen County, CA; Washoe County, NV).	E	716	NA	NA
*	*	*	*	*	*		*

Dated: November 21, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–29614 Filed 11–28–01; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 66, No. 230

Thursday, November 29, 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

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.; DA–00–03]

Milk in the Northeast and Other Marketing Areas; Notice of Extension of Time for Filing Comments

7 CFR part	Marketing area	AO Nos.
1000	General Provisions of Federal Milk Marketing Orders	
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
1030	Upper Midwest	AO–361–A34
1032	Central	AO–313–A43
1033	Mideast	AO–166–A67
1124	Pacific Northwest ..	AO–368–A27
1126	Southwest	AO–231–A65
1131	Arizona–Las Vegas.	AO–271–A35
1135	Western	AO–380–A17

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of time for filing comments.

SUMMARY: This document extends the time for filing comments on a recommended decision issued October 19, 2001, concerning proposed amendments to the minimum Class III and Class IV price formulas for Federal milk orders. Additional time to file comments was requested by a number of proprietary and cooperative handlers. Those requesting the extension state that more time is needed to fully analyze the impacts of the technical changes in the pricing formulas.

DATES: Comments are now due on or before January 25, 2002.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250. Parties filing comments are advised that faxing comments to (202) 690–0552 or e-mailing them to *joyce.mcpherson@usda.gov* may better assure their timely receipt and consideration. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7183, e-mail address: *clifford.carman@usda.gov.*

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; Published April 14, 2000, (65 FR 20094).

Tentative Final Decision: Issued November 29, 2000; Published December 7, 2000, (65 FR 76832).

Extension of Time—Northeast, et al.; DA–00–03

Interim Final Rule: Issued December 21, 2000; Published December 28, 2000, (65 FR 82832).

Recommended Decision: Issued October 19, 2001; Published October 25, 2001, (66 FR 54064).

Notice is hereby given that the time for filing comments to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreements and to the Class III and IV price formulas used under Federal milk orders is hereby extended from November 26, 2001, to January 25, 2002. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Dated: November 26, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–29677 Filed 11–26–01; 3:07 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Risk-Informed Treatment of Structures, Systems and Components

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Availability of draft rule wording.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available the draft wording of a possible amendment of its regulations. The proposal would add 10 CFR 50.69, ''Risk-Informed Treatment of Structures, Systems and Components.'' The proposal would permit power reactor licensees and applicants to implement an alternative regulatory framework with respect to certain treatment requirements currently imposed beyond practices for commercial grade equipment to add assurance of capability of structures, systems and components (SSCs) to perform their intended functions. Under this framework, licensees, using a risk-informed process for categorizing SSC according to their safety and risk significance, could remove SSCs of low safety significance from the scope of certain identified treatment requirements. The availability of the draft wording is intended to inform stakeholders of the current status of the NRC's activities to adopt 10 CFR 50.69 and to provide stakeholders the opportunity to comment on the draft changes. The NRC has also provided additional (''[ ]'') information within the body of the draft rule language which is bracketed (''[ ]'') to facilitate understanding of the NRC's intent on certain aspects of the proposed rule.

DATES: Comments should be submitted on or before December 31, 2001. Any comments received after this date may not be considered during drafting of the proposed rule. Because of scheduling considerations in preparing a proposed rule, the NRC requests that stakeholders provide their comments at their earliest convenience before the end of the comment period, if practicable.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O–16C1

or deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC's home page at *http://ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher at (301) 415–5905 or by e-mail to cag@nrc.gov. Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Eileen M. McKenna, Risk-Informed Initiatives, Environmental, Decommissioning, and Rulemaking Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–2189; Internet: *emm@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since the Commission published a Policy Statement on the Use of Probabilistic Risk Assessment in 1995, the NRC's efforts to consider risk insights in the regulatory infrastructure have evolved over the years. In SECY–98–300, dated December 23, 1998, under Option 2, the NRC staff proposed to add provisions to Part 50 for risk-informed alternative regulations, revise existing requirements to reflect risk-informed considerations, and to remove unnecessary or ineffective regulations. In SECY–99–256, dated October 29, 1999, the staff provided a rulemaking plan and an Advance Notice of Proposed Rulemaking (ANPR) for risk-informed changes using 10 CFR 50.69. In a Staff Requirements Memorandum dated January 31, 2000, the Commission directed the staff to proceed with the rulemaking and to publish the ANPR (65 FR 11488, March 3, 2000). In SECY–00–0194, dated September 7, 2000, the NRC staff subsequently communicated to the Commission its preliminary analysis of public comments on the ANPR and discussed issues involving 10 CFR 50.69.

The NRC has now developed draft wording for the changes to its regulations and has made them available on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* This draft rule language is preliminary and may be incomplete in one or more respects. This draft rule language was released to inform stakeholders of the current status of the 10 CFR 50.69 rulemaking and to provide stakeholders with an opportunity to comment on the draft revisions. Comments received prior to publishing the proposed rule will be considered in the development of the proposed rule. Comments may be provided through the rulemaking Web site at *http://ruleforum.llnl.gov/* or by mail as indicated under the **ADDRESSES** heading. The NRC may post updates periodically on the rulemaking Web site that may be of interest to stakeholders.

Dated at Rockville, Maryland, this 21st day of November 2001.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Chief, Risk-Informed Initiatives, Environmental, Decommissioning, and Rulemaking Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–29584 Filed 11–28–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AG 88

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear West, Inc. Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1004. Amendment No. 4 would allow the storage of low burn-up spent fuel in the NUHOMS®–24P canister. In addition, the Technical Specifications (TS) would be revised to correct administrative errors regarding the width dimension of the spent fuel. Specific changes would be made to TS 1.2.1 and 1.2.15, Tables 1–1a, 1–1b, 1–1c, 1–1d, 1–2a, and 1–2c, and Figure 1–1. The CoC would be revised to change the certificate holder from Transnuclear West, Inc. to Transnuclear Inc. Minor editorial changes would also be made to the CoC.

DATES: Comments on the proposed rule must be received on or before December 31, 2001.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML012620237. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov* of the Office of

Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 4 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P, –52B, and –61BT cask system design. The NRC is using the direct final rule procedure to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on February 12, 2002. However, if the NRC receives significant adverse comments by December 31, 2001, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

SAR Submitted by: Transnuclear Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS® –24P, NUHOMS®–52B, and NUHOMS®–61BT.

* * * * *

Dated at Rockville, Maryland, this 13th day of November, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–29444 Filed 11–28–01; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220–AB46

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to permit a spouse application, when filed simultaneously with the employee's application for a disability annuity, to be filed more than three months in advance of the earliest annuity beginning date. The proposed changes would bring §§ 217.9 and 217.30 into agreement with the distinction already found in § 218.7.

DATES: Submit comments on or before January 28, 2002.

ADDRESSES: Address any comments concerning this proposed rule to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 217.9 of the regulations of the Board provides for the effective period of application. This proposed rule amends section 217.9(b) to permit a spouse application, when filed simultaneously with the employee's application for a disability annuity, to be filed more than

three months in advance of the earliest annuity beginning date. This proposed rule also makes a conforming amendment to § 217.30 concerning the reasons for denial of an application, and provides greater clarity for such denials.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory analysis is required. Information collections associated with § 217.9 have been approved by the Office of Management and Budget under control number 3220–0002.

List of Subjects in 20 CFR Part 217

Claims, Railroad retirement, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, part 217 of the Code of Federal Regulations as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.9 of subpart B, is amended by adding directly after the words ''paragraph (b)(2)'', the words ''and paragraph (b)(3)'', and by adding a new paragraph (b)(3) to read as follows:

§ 217.9 Effective period of application.

* * * * *

(b) * * *

(3) *Application for spouse annuity filed simultaneously with employee disability annuity application.* When the qualifying employee's annuity application effective period is determined by the preceding paragraph (b)(2) of this section, a spouse who meets all eligibility requirements may file an annuity application on the same date as the employee claimant. The spouse application will be treated as though it were filed on the later of the actual filing date or the employee's annuity beginning date.

* * * * *

3. Section 217.30 of subpart E is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 217.30 Reasons for denial of application.

* * * * *

(c) The applicant files an application more than three months before the date on which the eligible person's benefit can begin except if the application is for an employee disability annuity or for a spouse annuity filed simultaneously with the employee's disability annuity application.

Dated: November 20, 2001.

By Authority of the Board,

For the Board, Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 01–29429 Filed 11–28–01; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2001–10916; Notice 2]

RIN 2127–AI55

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correction.

SUMMARY: NHTSA has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints. On November 2, 2001, NHTSA published an NPRM that proposes changes to the labels and written instructions that accompany child restraints (66 FR 55623). Due to an error, that NPRM did not address the issue of when, if adopted, NHTSA would require child restraints to comply with the proposed requirements. This document corrects that error.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 2, 2002. The reason for this closing date is to make it coincide with the the January 2 comment closing date of the November 6, 2001 NPRM.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mary Versailles of the NHTSA Office of Planning and Consumer Programs, at 202–366–2057.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints. On November 2, 2001, NHTSA published a Notice of Proposed Rulemaking (NPRM) that proposes changes to the labels and written instructions that accompany child restraints (66 FR 55623). Due to an error, the NPRM did not address the issue of when, if adopted, NHTSA would require child restraints to comply with the proposed requirements. This notice corrects that error.

In trying to decide how much leadtime to allow manufacturers, NHTSA first examined past upgrades of labeling requirements. When NHTSA updated air bag label requirements for vehicles and child restraints in 1996, vehicle manufacturers were required to comply with the new requirements within 90 days. Child restraint manufacturers were required to comply within 180 days. The longer leadtime for child restraints was an acknowledgement that child restraint manufacturers would have to change their manufacturing process to include a means of permanently labeling the padding or cushion, a process that was not then employed. Because the labels affected by that rulemaking were manufactured using processes that are more involved that the typical sticky label on the side of a child restraint, leadtime of 180 days should be feasible for the current proposal.

However, the same need for expedited action does not exist as existed for air bags. Also, this proposal would require a change in most, if not all, labels currently on child restraints. NHTSA also acknowledges that, if it were to require permanent molding or some similar technology, a longer leadtime would be needed for those labels. In addition, NHTSA is proposing changes to the written requirements.

Based upon these considerations, NHTSA is proposing a leadtime of one year for the proposed changes to child restraint labels and written instructions. In addition, to encourage the earliest possible installation of the new enhanced labels, NHTSA is would allow manufacturers to install the new labels and provide the new written instructions before the required date.

This correction does not affect the statements made in the ''Rulemaking

Analyses and Notices'' section of the November 2, 2002 NPRM.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''search.''
3. On the next page type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1999–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Issued on November 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–29637 Filed 11–28–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI18

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Carson Wandering Skipper as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to make permanent the provisions of the emergency rule listing the Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) in California and Nevada as an endangered species under the Endangered Species Act of 1973, as amended (Act). The emergency rule listing the population is published concurrently in this issue of the **Federal Register**.

The Carson wandering skipper is currently known from only two populations, one in Washoe County, Nevada, and the other in Lassen County, California. This subspecies is threatened by a variety of factors including habitat destruction, degradation, and fragmentation due to agricultural practices (such as excessive livestock grazing and wetland habitat modification), urban development, and non-native plant invasion. Other threats include impacts from collecting, livestock trampling, approved and proposed water exportation projects, road construction, recreation, pesticide drift, and inadequate regulatory mechanisms. Extinction could also occur by naturally occurring events due to the small, isolated nature of the remaining populations. We find these threats constitute immediate and significant risk to the species.

We solicit additional data and information that may assist us in making a final decision on this proposed action. This proposal, if made final, would extend the Federal protection and recovery provisions of the Act to this subspecies.

DATES: We will accept comments until the close of business on January 28, 2002. Public hearing requests must be received by January 14, 2002.

ADDRESSES: Comment submission: If you wish to comment, you may submit your comments and materials by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502.

(2) You may hand-deliver written comments to our Nevada Fish and Wildlife Office at the address given above.

(3) You may send comments by electronic mail (e-mail) to: *fw1renoskipper@r1.fws.gov.* See the Public Comments Solicited section below for file format and other information on electronic filing.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section) (telephone 775/861–

6300; facsimile 775/861–6301), or Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825–1846 (telephone 916/414–6000; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Background

For a discussion of biological background information, previous Federal action, factors affecting the species, critical habitat, and conservation measures available to listed and proposed species, consult the emergency rule on the Carson wandering skipper published concurrently in this issue of the **Federal Register**.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Carson wandering skipper;

(2) The location of any additional populations of this species, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this species.

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN–AI18]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Nevada Fish and Wildlife Office at telephone number 775/861–6300.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

In making any final decision on this proposal, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

Public Hearings

The Act requires that we hold one or more public hearings on this proposal, if requested within 45 days of the date of publication of a proposed rule. Such requests must be made in writing and be addressed to the Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section). Should a public hearing be requested, then we will announce the date, time, and place for the hearing in the **Federal Register**, through legal notices in area newspapers, and in news releases to the media.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send the peer reviewers copies of this proposed rule, as well as the emergency rule, immediately following publication in the **Federal Register**. We will invite them to comment, during the public comment period, on specific assumptions and conclusions regarding the proposed rule to list the Carson wandering skipper.

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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 existing OMB control number is 1018–0093 and expires 3/31/2004.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

Author

The primary author of this proposed rule is Marcy Haworth, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble to the emergency rule listing the Carson wandering skipper as endangered, published concurrently in this issue of the **Federal Register**, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h), by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
Skipper, Carson wandering.	*Pseudocopaeodes eunus obscurus*.	U.S.A. (CA, NV)	U.S.A., (Lassen County, CA; Washoe County, NV).	E	716	NA	NA
*	*	*	*	*	*		*

Dated: November 21, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–29613 Filed 11–28–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 110601C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination that an EFP application, submitted by the Massachusetts Division of Marine Fisheries (MDMF), contains all the information as required by the regulations that govern exempted experimental fishing under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and has determined that the application warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP will be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator intends to issue an EFP that would allow a single vessel to conduct fishing operations in areas in the Gulf of Maine that would otherwise be closed by regulations governing the multispecies groundfish fisheries of the Northeastern United States. This notification is intended to provide interested parties the opportunity to comment on the proposed experimental fishery.

DATES: Comments must be received by December 14, 2001.

ADDRESSES: Comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Proposed Experimental Fishery.''

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, 978–281–9347.

SUPPLEMENTARY INFORMATION: The regulations that govern exempted experimental fishing, at 50 CFR 600.745, allow the Regional Administrator to authorize for certain purposes the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application as required under 50 CFR 600.745 (b)(3), and the conservation goals and objectives of the FMP are not compromised.

The MDMF submitted to NMFS on October 15, 2001, an application for an EFP to conduct gear research in the groundfish fishery in the Gulf of Maine (GOM). The Regional Administrator has determined that this application warrants further consideration. The research would target flatfish and cod in block 124 (a 30 minute square as used by the Multispecies FMP), during February and March, with the objective of comparing two designs of modified sink gillnets to a traditional sink gillnet design. The experimental sink gillnets would use modified leadlines and floatlines to reduce the vertical profile of the nets in order to exploit behavioral differences between cod and flatfish. Keeping the nets close to the bottom may allow flatfish to continue to be captured while cod are avoided. The goal of the research is to further the design of a sink gillnet that could result in significant reductions in the bycatch of cod in the sink gillnet sector of the flatfish fishery. This research is highly pertinent to the management of groundfish species under the FMP.

A single vessel would conduct 10 overnight gillnet sets, with approximately 24 hours soak time. Each overnight set would be composed of two strings of experimental nets and two strings of standard nets serving as controls. Each string would consist of eight nets, each 300 ft (91.4 m) long, for a total of 32 nets used per overnight set. The gillnets would be deployed and hauled using standard commercial practices.

The vessel would utilize its multispecies days-at-sea and fish in

compliance with the pertinent mesh size, minimum fish size, and trip limit regulations of the FMP. Manomet Center for Conservation Sciences observers or MDMF personnel would be on board the vessel during all trips when the gillnets are hauled. Legal catch would be kept and marketed, and the proceeds would serve as partial compensation to the vessel owner and crew for participation in the experiment. All incidental species and non-legal catch will be discarded following measurement and enumeration. The principal investigator of the experiment received funding for the research from the Northeast Consortium (NEC). The NEC is an organization composed of New England fishing industry members and university staff that facilitates the funding of cooperative fishery research.

An EFP would be required to exempt the vessel from the GOM Rolling Closure Area VI and Rolling Closure Area I, during February and March, respectively. The vessel would be prohibited from fishing in that portion of block 124 that is inclusive of the Western GOM area closure.

The proposed location and timing of the experiment is based on the experience of some industry members and similar research (Phase I) conducted in December 2000 and January 2001 that concluded that the absence of an adequate number of flatfish during Phase I of that study was a result of the research having been conducted in sub-optimal places and times. The proposed experiment (Phase II) in block 124 during February and March is thought to be optimal for catching sufficient quantities of cod and flatfish to test the experimental hypothesis.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties with the opportunity to comment on application for proposed EFPs. Based on the outcome of this EFP, this action may lead to further rulemaking.

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

Dated: November 21, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–29640 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 111501A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination that an exempted fishing permit (EFP) application for mixed groundfish fisheries of the Northeast, submitted by the Manomet Center for Conservation Sciences (Manomet), contains all the required information as required by the regulations that govern exempted experimental fishing under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP) and within the scope of earlier analyses of the impacts. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notice must be received at the appropriate address or fax number (see **ADDRESSES**) on or before December 14, 2001.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on EFP Proposal.'' Comments may also be sent via facisimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, 978–281–9103, Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS announces that the Regional Administrator intends to issue an EFP that would allow one federally permitted Northeast multispecies vessel to test the effectiveness of a fish excluder device, referred to as ''Ex-it,'' at excluding undersized cod using a codend cover having mesh smaller than authorized under § 648.80(a)(2). This EFP may also allow access to the Conditional Gulf of Maine (GOM) Closure Area, specified at § 648.81 (o)(1)(ii), if it is deemed necessary.

An industry cooperative proposal was received from Manomet on October 19, 2001, for one EFP to test the effectiveness of a fish excluder device, ''Ex-it,'' at excluding undersized cod in the mixed groundfish fishery of the Northeast. The goal of the experiment is to develop a selective trawl gear that releases undersized cod, while retaining fish of marketable size.

The proposed study would test two versions of the ''Ex-it'' device. The device is inserted into the top panel of a codend within a trapezoidal steel frame, and consists of a net tube in the shape of an hourglass, and steel grids. The grid system is made of six smaller flexible grids that are joined together, with the distance between the grid bars spaced according to the species and size of fish intended to be excluded. One ''Ex-it'' device would have a grid bar interval of 60 mm, while the other would have a grid bar interval of 70 mm. In order to test the effectiveness of the two ''Ex-it'' devices at excluding undersized cod, a retaining bag having 3–inch (7.62–cm) mesh would be attached to the external side of the codend, in correspondence to the trapezoidal steel frame. This codend cover will enable virtually all catch escaping through the ''Ex-it'' device to be retained, thereby allowing for the comparison of fish excluded versus fish retained. This information can then be used to formulate species-specific selectivity curves for each device.

Fishing operations are expected to commence at the beginning of December 2001, and last approximately 6 days. A maximum of 30 tows would be completed, with an average of 5 tows per day. The study would be conducted in a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area (GOM/GB RMA) and take place during daylight hours. The study is proposed to occur in the area bound by the following coordinates: The New Hampshire

shoreline at 43° N lat. and east to 43° N lat./70° W long., then south to the 42° N lat. line, then west to the Cape Cod shoreline, excluding the year-round Western GOM closure area. This study area does not encompass any GOM seasonal closure areas during the month of December. However, depending on when the EFP is issued and December weather conditions, the participating vessel may need to complete the required tows in early January 2002, when the Massachusetts Bay-Stellwagen Bank Conditional Closure Area (Rolling Closure Area VI, § 648.81 (o)(1)(ii)) goes into effect. Thus, an exemption from this seasonal closure area may be required to complete the proposed study. If necessary, a separate EFP with an exemption from the rolling closure area may be issued.

The target species would consist of cod, yellowtail flounder, haddock, American plaice (dab), winter flounder (blackback), and grey sole (witch flounder). The main incidental species are expected to consist of skate, smooth dogfish, spiny dogfish, sculpins, sea raven and sea robin. Based on previous work in this area, a total catch amounting to 2,000 lb (907 kg) of cod, 500 lb (227 kg) of yellowtail flounder, 3,900 lb (1,769 kg) of haddock, 50 lb (23 kg) of American plaice, 20 lb (9 kg) of winter flounder, and 260 lb (118 kg) of grey sole is expected. The participating vessel would only be authorized to retain fish for commercial sale in the amounts allowed under its Federal fishery permits and days-at-sea allocations, and according to the applicable minimum fish size requirements. No undersized fish would be retained on board the vessel. The vessel would be required to operate under the multispecies days-at-sea regulations.

One EFP would be issued to a federally permitted Northeast multispecies vessel to exempt it from the gear restrictions and, if necessary, the Conditional GOM Closure Area of the FMP.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties with the opportunity to comment on applications for proposed EFPs. Based on the outcome of this EFP, this action may lead to further rulemaking.

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

Dated: November 21, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–29641 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 230

Thursday, November 29, 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

Animal and Plant Health Inspection Service

[Docket No. 01–103–1]

Veterinary Services; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposed study to determine the disappearance rate of bison fetuses in the environment. The environmental assessment documents our review and analysis of environmental impacts associated with the proposed study. We are making this environmental assessment available to the public for review and comment.

DATES: We invite you to comment on the environmental assessment. We will consider all comments we receive that are postmarked, delivered, or e-mailed by December 31, 2001.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–103–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–103–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–103–1'' on the subject line.

You may read the environmental assessment and any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis,usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The mission of Veterinary Services (VS) of the Animal and Plant Health Inspection Service (APHIS) is to protect and improve the health, quality, and marketability of domestic animals by preventing, controlling, and/or eliminating animal diseases and monitoring and promoting animal health and productivity.

Brucellosis is a contagious disease that affects animals and humans, caused by bacteria of the genus *Brucella. Brucella abortus* principally affects bison and cattle. In bison and cattle, brucellosis localizes in the reproductive organs and/or the udder, causing abortion in dams as well as systemic effects in males and females. Female cattle infected with brucellosis also suffer infertility and lowered milk production.

Brucellosis is spread when bacteria are shed in milk, aborted fetuses, afterbirth, or other reproductive tract discharges and are ingested by a susceptible animal. Cattle and bison have a tendency to sniff and lick an aborted fetus, which provides an avenue for the disease to spread if *Brucella* is present.

Brucellosis has caused devastating losses to farmers in the United States over the last century. It is estimated that the disease has cost the Federal Government, the States, and the livestock industry billions of dollars in direct losses and efforts to eliminate the disease. APHIS has estimated that if efforts to eradicate the disease were stopped, the costs of producing beef and milk would increase by an estimated $80 million annually in less than 10 years.

Brucellosis infection occurs in bison in Yellowstone National Park. Bison roam wild in Yellowstone National Park, and during winter and spring, some migrate outside of the park onto State and private lands. The prevention of the spread of brucellosis from bison to cattle in and around the park is an issue of concern.

VS, in cooperation with other Federal and State agencies, proposes to conduct an 11-week study in the West Yellowstone and Gardiner areas in Montana starting in March 2002 to determine how long a bison fetus remains in the environment as a potential source of *Brucella* organisms before it deteriorates or is consumed by scavengers. The research on the rate of fetal disappearance is supported in the Record of Decision for the Final Environmental Impact Statement and Bison Management Plan for the State of Montana and Yellowstone National Park, dated December 20, 2000. Also, the study will comply with step 1 of the Joint Bison Management Plan within the Record of Decision.

To provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with this study, we have prepared an environmental assessment titled, ''Proposed Study for Bison Fetal Disappearance Rate,'' dated November 2001. The environmental assessment provides a basis for our conclusion that the potential impacts to the environment of the proposed study are expected to be insignificant.

The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/vsdocs.html.* You may request paper copies of the environmental assessment from the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room

(the location and hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 27th day of November 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–29724 Filed 11–28–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Interior Wetlands Environmental Impact Statement; Hiawatha National Forest, Chippewa County, Michigan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of proposed land management activities, and corresponding alternatives, within the Interior Wetlands project area. The project is located on the Sault Ste. Marie Ranger District, Hiawatha National Forest, Chippewa County, Michigan, approximately 35 miles southwest of Sault Ste. Marie, Michigan. The project area is approximately 30,600 acres and management activities are being proposed on less than 15 percent of the area.

Jack pine stands experience a cyclical outbreak of jack pine budworm. Older trees are more susceptible to defoliation which can lead to mortality and dead tops. In the Interior Wetlands project area much of the jack pine is more than 60 years old. The jack pine in the project area experienced budworm defoliation during the 1991/1992 outbreak and is showing some defoliation during the outbreak that began in 2001. The Forest Service is evaluating the options available to develop a more evenly distributed age-class and to improve the vigor of jack pine stands in order to minimize the impacts of budworm defoliation. In addition to proposing jack pine salvage and regeneration in Interior Wetlands, the Forest Service evaluated some other management opportunities within the entire project area to implement the Hiawatha National Forest Land and Resource Management Plan (Forest Plan, 1986). The proposed action includes salvage and regeneration of jack pine, timber harvesting and regeneration of other species, changes to the transportation system, changes to the old growth system, timber stand improvement projects, and wildlife and fisheries habitat improvement projects.

Overall guidance of land management activities on the Hiawatha National Forest is provided by the Forest Plan. In order to meet the objectives and desired future conditions set forth in the Forest Plan, the following purpose and need has been identified for the Interior Wetlands project area: (1) Reduce the impacts of the jack pine budworm by creating a more evenly distributed age-class structure (which also improves habitat for sandhill crane, merlin, northern harrier, and other species), improving vigor, and increasing growth rates in jack pine stands. (2) Regenerate older aspen and mixed balsam fir/aspen/paper birch stands to maintain these forest types; provide habitat for white-tailed deer, ruffed grouse, snowshoe hare, and other species; improve vigor, and increase growth rates. (3) Regenerate older black spruce stands to improve vigor and to increase growth rates. (4) Remove some trees in some jack pine, aspen, balsam fir/aspen/paper birch, northern hardwoods, paper birch, black spruce, red pine, white pine, and cedar to either concentrate growth on the remaining trees or to provide space for new trees to become established. (5) Provide useable wood products to local markets and improve timber age-class distribution, vigor, and growth rates on merchantable stems to ensure a more even flow of wood products in the future. (6) Prepare areas where jack pine and black spruce are being regenerated by reducing the slash and exposing mineral soil for a seedbed. (7) Manage an efficient transportation system through construction, reconstruction, maintenance, and decommissioning of roads. (8) Improve the quality and survival of some white pine stems damaged by white pine weevil and blister rust. (9) Evaluate stands currently in the old growth system and other stands to determine if there is a different arrangement of stands that could provide better existing old growth characteristics and better placement across the landscape. (10) Adjust wildlife opening system by creating openings or maintaining existing openings by removing woody encroachment to provide habitat for sandhill crane, black bear, ruffed grouse, and other species. (11) Improve fish habitat (primarily brook trout) by adding log bank cover and placing spawning gravel. (12) Design projects and/or develop mitigation measures, as appropriate, to minimize impacts to the resources to acceptable levels defined by laws, regulations, or policies.

A roads analysis for the project area will be conducted in conjunction with the EIS. The roads analysis is not a decision document but is necessary to make an informed decision. At a minimum, the roads analysis will identify: needed and unneeded roads; road associated environmental and public safety risks; site-specific priorities and opportunities for road improvements and decommissioning; areas of special sensitivity, unique resource values, or both; and any other information that may be needed to support project-level decisions. Adjacent landowners, citizens groups, State, local, and Tribal governments, and other Federal agencies are invited to comment on the transportation system.

The Draft Environmental Impact Statement (DEIS) will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on National Forest system lands will be considered. The DEIS will disclose the analysis of site-specific mitigation measures and their effectiveness. The DEIS is expected to be filed with the EPA and available for public review by November 2002.

DATES: Comments concerning the proposed action and scope of the analysis should be received within 30 days of this notice to receive timely consideration in the DEIS. A public meeting about this project will be held on December 4, 2001 at 6:30 pm.

ADDRESSES: Mail written comments to Stevan J. Christiansen, District Ranger, St. Ignace and Sault Ste. Marie Ranger Districts, 1798 West US–2, St. Ignace, MI 49781. The public meeting for this project will be held at the Trout Lake Town Hall on the main street of Trout Lake (M–123).

FOR FURTHER INFORMATION CONTACT: Martha Sjogren, Team Leader, St. Ignace Ranger District. Phone: (906) 643–7900 ext. 133. Email: *msjogren@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information

in this notice is summarized. Contact the person identified in the For Further Information Contact section to obtain additional information about desired future condition, purpose and need, proposed action, design criteria and/or mitigation measures, and maps. The information packet and color maps are also available at: *http://www.fs.fed.us/r9/hiawatha.*

The project area is approximately 30,600 acres and is located near the town of Trout Lake, Chippewa County, Michigan. Proposed activities within the project area include portions of the following areas: T44N, R4W, Sections 19, 31; T44N, R5W, Sections 2–11, 13–27, 35, 36; T44N, R6W, Sections 1–18, 21–24; T45N, R5W, Sections 8–10, 15–17, 19–22, 27–33; T45N, R6W, Sections 23, 25, 26, 31, 32, 34–36. To meet the purpose and need, this project proposes:

1. To salvage (through clearcut harvest) and regenerate approximately 2,216 acres of mature and overmature jack pine.
2. To harvest (clearcut) and regenerate approximately 289 acres of mature and overmature aspen, balsam fir/aspen/paper birch, and black spruce stands.
3. To harvest (clearcut) and regenerate approximately 119 acres of mature black spruce stands.
4. To harvest some trees (partial removal cuts) on approximately 508 acres in jack pine, aspen, balsam fir/aspen/paper birch, northern hardwoods, black spruce, red pine, white pine, and cedar.
5. To harvest (commercially thin) about 148 acres in northern hardwoods and paper birch.
6. Prepare sites for jack pine regeneration by rollerchopping about 1,400 acres and prescribed burning about 400 acres.
7. To adjust the transportation system by: constructing approximately 1.7 miles of classified roads, 1.5 miles of temporary roads on existing unclassified road corridors and then decommission, and 23.1 miles of temporary roads; changing the classification of approximately 2.8 miles from unclassified to classified; performing road maintenance on approximately 7.8 miles of classified roads, and 2.8 miles unclassified roads changed to classified roads; reconstructing approximately 0.1 mile of classified road; and decommissioning approximately 0.3 miles of classified roads and approximately 3.2 miles of unclassified roads.
8. To prune approximately 40 acres of weevil and blister rust damaged white pine saplings.
9. To adjust the old growth system by removing from the existing system about 348 acres with limited existing old growth conditions or in unfavorable locations and adding to the system about 223 acres with some existing old growth conditions or in more favorable locations.
10. To create wildlife openings on about 9 acres and maintain openings on about 157 acres by removing woody encroachment.
11. To improve fish habitat in Biscuit Creek by adding log bank cover along approximately 750 feet and placing 75 square yards of spawning gravel in the stream.
12. To develop design criteria and/or mitigation measures to reduce the impacts of management activities on resources. Specifically, design projects and/or mitigation measures to control road use; protect threatened, endangered and sensitive species; protect plant habitat; protect wildlife and protect and/or improve scenic integrity; protect heritage resources; provide safe snowmobiling in area of timber harvest; provide good seed source jack pine cones; and protect soil and hydrology.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes in response to the issues identified during public involvement.

Preliminary Issues

The public has had several previous opportunities to comment on these proposed actions. The original Interior Wetlands EA (circa 1997) was included in the NEPA quarterly, scoping letters were sent out, and public meetings were held. The public commented again during the 30-day public comment period (April 1999), and when the EA was appealed. In September 2000, the Forest Service released the Revised Interior Wetlands Project Set EA for another 30-day public comment period. From the public comments received from 1997–2000, preliminary issues that may be addressed in this EIS are as follows:

1. There is too much timber harvest proposed in the area, there is too much clearcutting proposed, and other resources (e.g. wildlife, wetlands, soils, and hydrology) would be negatively impacted.
2. There is too much road construction to accommodate the timber harvest, there are too many temporary roads proposed, and other resources (e.g. wildlife, wetlands, soils, and hydrology) would be negatively impacted by the construction and by ineffective closure and obliteration of temporary roads.
3. There is too much focus on providing timber products and not enough focus on restoring the ecosystem to more natural conditions.

Decisions To Be Made

The St. Ignace and Sault Ste. Marie District Ranger will decide the following:

1. Whether or not to salvage and harvest timber and if so, the selection and site-specific location of appropriate timber management practices (silvicultural prescription, logging system, fuels treatment, and reforestation); road construction/reconstruction/maintenance/decommissioning necessary to provide access and protect resources; and appropriate mitigation measures.
2. Whether or not to make adjustments to the old growth system.
3. Whether or not to maintain existing wildlife openings and create new ones.
4. Whether or not to modify fish habitat by adding log bank cover and placing spawning gravel.
5. What, if any, specific project monitoring requirements would be needed to ensure mitigation measures are implemented and effective.

Public Involvement and Scoping

The public is encouraged to attend the public meeting at 6:30 pm on December 4, 2001 at the Trout Lake Town Hall. Forest Service officials will be available at that time to present an overview of the purpose and need and proposed action. It is also an opportunity for the public to comment on the project.

Public participation is an important part of the analysis. The public may visit Forest Service officials at any time during the analysis and prior to the decision. Public scoping has been ongoing for the Interior Wetlands project. The Forest Service will be seeking additional information, comments, and assistance from Federal, State, and local agencies, as well as local Native American tribes and other individuals or organizations that may be interested in or affected by the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will:

Identify potential issues.

Identify issues to be analyzed in depth.

Identify alternatives to the proposed action.

Explore additional alternatives that will be derived from issues recognized during scoping.

Identify potential environmental effects of this project and alternatives (*e.g.* direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 2002. At that time EPA will publish a Notice of Availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by February 2003. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the DEIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The District Ranger of the St. Ignace and Sault Ste. Marie Ranger Districts, Hiawatha National Forest, 1798 West US–2, St. Ignace, MI 49781, is the Responsible Official. As the Responsible Official, he will decide if the proposed project will be implemented. He will document the decision and reasons for the decision in the Record of Decision.

Authority: National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b).

Dated: November 7, 2001.

Clyde Thompson,

Forest Supervisor, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829.

[FR Doc. 01–29727 Filed 11–28–01; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Friday, December 7, 2001, in Lewiston, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on December 7 begins at 10:00 AM, at the Helm Restaurant in the Sacajawea Center, 1824 Main Street, Lewiston, Idaho. Agenda topics will include FACA overview, Charter overview, Process for project identification/recommendation, election of Chairperson, operating guidelines, and establishment of future meeting schedule.

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: November 26, 2001.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 01–29728 Filed 11–27–01; 11:04 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review of certain circular welded carbon pipes and tubes from Taiwan.

SUMMARY: We are rescinding the May 1, 2000 through April 30, 2001 antidumping duty administrative review of Yieh Hsing Enterprise Co. Ltd. (Yieh Hsing) in its entirety, in accordance with § 351.213(d)(1) of our regulations, based on a withdrawal of the company's request.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Mike Heaney, AD/CVD Enforcement, Group III, Office 8, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5222 and (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (2001).

Background

In response to a timely request by Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), the Department initiated an administrative review of the antidumping duty order on certain circular welded carbon steel pipe and tubes from Taiwan, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of*

Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part, 66 FR 32934 (June 19, 2001). On July 3, 2001, Yieh Hsing withdrew its request for review. No other interested party requested a review for this period. Yieh Hsing was the sole respondent in the review.

Rescission or Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because the party requesting review withdrew its request for an administrative review within the 90-day deadline, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with § 351.213(d)(4) of the Department's regulations.

Dated: November 23, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–29673 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of Time Limit for Final Results of New Shipper Antidumping Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–2312 and (202) 482–0666, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On September 29, 2000, the Department received timely requests for review, in accordance with section 751(a)(2)(B)(ii) of the Act and § 351.214(c) of the Department's regulations, from Coastal (Jiangsu) Foods Co., Ltd. (Coastal), Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou), and Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen), to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. On November 6, 2000, the Department published its initiation of these new shipper reviews for the period September 1, 1999 through August 31, 2000. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Reviews*, 65 FR 66525 (November 6, 2000).

On March 16, 2001, the Department published an extension of the deadline for completion of the preliminary results of these new shipper reviews until August 27, 2001. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 66 FR 15219 (March 16, 2001). On August 9, 2001, we rescinded the new shipper reviews for Coastal and Shouzhou and extended the period of review (POR) for Shanghai Taoen by one month. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews*, 66 FR 41831 (August 9, 2001). Thus, only the new shipper review of Shanghai Taoen remained. On September 6, 2001, the Department published the preliminary results of this new shipper review. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 66 FR 46602 (September 6, 2001).

Extension of Time Limits for Final Results

Section 353.214(i)(1) of the Department's regulations requires the Department to issue final results within 90 days after the date on which the preliminary results in a new shipper review were issued. However, if the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 90-day period to 150 days under § 351.214(i)(2) of the Department's regulations. The final results for this new shipper review are currently due on November 25, 2001. We find the valuation issues in this review to be extraordinarily complicated, and, therefore, we are unable to complete this review by the scheduled deadline. Therefore, in accordance with § 351.214(i)(2) of the Department's regulations, the Department is extending the time period for issuing the final results of these new shipper reviews by 15 days until December 10, 2001.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act, as amended, and § 351.214(i)(2) of the Department's regulations.

Dated: November 23, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–29671 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–811]

Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Lori Ellison at 202–482–5811, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round

Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Background

On September 21, 2001, the Department issued its final determination in the antidumping duty investigation of hot-rolled steel from Ukraine. See Notice of Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine, 66 FR 50401 (October 3, 2001) (''Final Determination'').

On November 13, 2001, the International Trade Commission (''ITC'') notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Ukraine.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department is directing Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of hot-rolled carbon steel flat products from Ukraine. The antidumping duties will be assessed on all unliquidated entries of hot-rolled carbon steel flat products from Ukraine entered, or withdrawn from warehouse, for consumption on or after May 3, 2001, the date on which the Department published its notice of preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''Ukraine-Wide'' rate applies to all exporters of subject merchandise from Ukraine.

Exporter/manufacturer	Weighted-average margin
Ukraine-Wide Rate	90.33

This notice constitutes the antidumping duty order with respect to hot-rolled carbon steel flat products from Ukraine. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Department of Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: November 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29665 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Notice of the Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0165.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Scope of Order

The products covered by this antidumping duty order are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, for example, are outside or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this order, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that hot-rolled carbon steel flat products from the People's Republic of China (''PRC'') is being sold at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Steel Flat Products From The People's Republic of China,* 66 FR 49632 (September 28, 2001).

On November 13, 2001, in accordance with section 735(d) of the Act, the International Trade Commission (''the Commission'') notified the Department of its final determination pursuant to section 735(b)(1)(A)(e) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of hot rolled steel from the PRC. These antidumping duties will be assessed on all unliquidated entries of hot rolled steel from the PRC entered, or withdrawn from the warehouse, for consumption on or after May 3, 2001, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Steel Flat Products From The People's Republic of China* (66 FR 22183). Customs must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (In percent)
Angang Group International Trade Corporation	69.85
Shanghai Baosteel Group Corporation	64.20
Benxi Iron & Steel Group Co., Ltd.	90.83
Panzhihua Iron & Steel (Group) Company	65.59
Wuhan Iron & Steel Group Corporation	65.59
PRC-Wide	90.83

This notice constitutes the antidumping duty order with respect to hot rolled steel from the PRC pursuant to section 735(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: November 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29666 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Nancy Decker at (202) 482–3019 or (202) 482–0196, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 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 of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (2001).

Scope of Order

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

• Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above

(including, e.g., ASTM specifications A543, A387, A514, A517, A506).

• Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.

• Ball bearings steels, as defined in the HTS.

• Tool steels, as defined in the HTS.

• Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

• ASTM specifications A710 and A736.

• USS Abrasion-resistant steels (USS AR 400, USS AR 500).

• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand is being sold at less-than-fair-value (LTFV). *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 49622 (September 28, 2001). On November 13, 2001, the U.S. International Trade Commission (the ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from Thailand.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the U.S. price of the subject merchandise for all relevant entries of hot-rolled steel from Thailand. These antidumping duties will be assessed on all unliquidated entries of hot-rolled steel from Thailand entered, or withdrawn from warehouse, for consumption on or after May 3, 2001, the date on which the Department published its notice of preliminary determination for this investigation in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 22199, (May 3, 2001).

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins:

Manufacturer/exporter	Cash deposit rate (In percent)
Sahaviriya Steel Industries	4.44
Siam Strip Mill Public	20.30
All Others	4.44

The ''All Others'' rates apply to all exporters in Thailand of subject merchandise not specifically listed.

Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, the product under investigation is subject to a countervailing duty investigation. *See Notice of Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001).

Therefore, for all entries of hot-rolled steel from Thailand entered, or withdrawn from warehouse, for consumption on or after the date on which the order in the companion countervailing duty investigation is published in the **Federal Register**, we will request for duty deposit purposes that the Customs Service deduct the portion of the margin attributable to export subsidies as determined in the countervailing duty investigation. The antidumping duty cash deposit rates, as adjusted for export subsidies, are as follows:

Manufacturer/exporter	Margin (In percent)
Sahaviriya Steel Industries	3.86
Siam Strip Mill Public	19.72
All Others	3.86

This notice constitutes the antidumping duty order with respect to hot-rolled steel from Thailand. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of the antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: November 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29667 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–835]

Notice of Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 1, 2000).

Scope of the Order

The products covered by this order are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Tariff Act, the Department made its final determination that certain hot-rolled carbon steel flat products from Taiwan are being sold at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-rolled Carbon Steel Flat Products from Taiwan,* 66 FR 49617, September 28, 2001. On November 13, 2001, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Taiwan.

Therefore, in accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of certain hot-rolled carbon steel flat products from Taiwan. These antidumping duties will be assessed on all unliquidated entries of certain hot-rolled carbon steel flat products from Taiwan entered, or withdrawn from warehouse, for consumption on or after May 3, 2001, the date on which the Department published its notice of preliminary determination in the **Federal Register**

(66 FR 22204). Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rate applies to all exporters of subject certain hot-rolled carbon steel flat products not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (In percent)
China Steel Corporation (including Yieh Loong)	29.14
An Feng Steel Co., Ltd.	29.14
All Others	20.28

This notice constitutes the antidumping duty order with respect to certain hot-rolled carbon steel flat products from Taiwan. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: November 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29668 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge at (202) 482–3518 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 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 Tariff Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department's) regulations are to the regulations at 19 CFR part 351 (2000).

Scope of Order

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor

lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands is being sold at less-than-fair-value (LTFV). *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,* 66 FR 50408 (October 3, 2001). On October 24, 2001, the Department issued an amended final determination (*see Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,* 66 FR 55637, November 2, 2001). On November 13, 2001, the U.S. International Trade Commission (the ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from the Netherlands.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of hot-rolled steel from the Netherlands. These antidumping duties will be assessed on all unliquidated entries of hot-rolled steel from the Netherlands entered, or withdrawn from warehouse, for consumption on or after May 3, 2001, the date on which the Department published its notice of preliminary determination for this investigation in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,* 66 FR 22146, (May 3, 2001).

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rates apply to all exporters in the Netherlands of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/Exporter	Cash deposit rate (percent)
Corus Staal BV	2.59
All Others	2.59

This notice constitutes the antidumping duty order with respect to hot-rolled steel from the Netherlands. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of the antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act.

Dated: November 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29669 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Charles Riggle, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0186, (202) 482–0650, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Scope of Order

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese,
- 2.25 percent of silicon,
- 1.00 percent of copper,
- 0.50 percent of aluminum,
- 1.25 percent of chromium,

- 0.30 percent of cobalt,
- 0.40 percent of lead,
- 1.25 percent of nickel,
- 0.30 percent of tungsten,
- 0.10 percent of molybdenum,
- 0.10 percent of niobium,
- 0.15 percent of vanadium or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506). Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

Amended Final Determination

In accordance with section 735(a) of the Act, on September 28, 2001, the Department published its affirmative final determination of the antidumping duty investigation of certain hot-rolled carbon steel flat products from Romania (*Notice of Final Determination of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Romania,* 66 FR 49625). On October 5 and 9, 2001, we received ministerial error allegations, timely filed pursuant to § 351.224(c)(2) of the Department's regulations, from the respondents [1] and certain petitioners,[2] respectively, regarding the Department's final margin calculations. On October 10, 2001, we received rebuttal comments from these petitioners.

The respondents alleged that the Department (1) Erred in not using the purchase price of sulphuric acid from Bulgaria in its cost of production calculations, (2) mistakenly increased electricity consumption by almost 30 percent rather than the intended 10 percent, and (3) incorrectly assumed that several shipments of raw materials were transported by barge when they had in fact been transported by train or truck. The petitioners argued that the Department erroneously calculated the non-depreciation overhead rate, and failed to apply the total overhead rate to certain sales in its margin calculations. The petitioners also rebutted the respondents' claim that the Department should have used the purchase price of Bulgarian sulphuric acid in its cost of production calculation.

In accordance with section 735(e) of the Act, we have determined that ministerial errors were made in our final margin calculation in the adjustment of electricity consumption and the application of the total overhead rate for certain sales. For a detailed analysis of these allegations, and the Department's position, *see* the October 24, 2001 Memorandum to Bernard T. Carreau from Charles Riggle, regarding *Ministerial Error Allegations* on file in room B–099 of the Main Commerce building (*Ministerial Error Memo*).

This determination is based on a re-examination of the calculations performed to obtain constructed value and the final dumping margins. We determined that all other errors alleged by both parties were methodological and not ministerial, as defined in section 735(e) of the Act. In addition, we discovered that two factor inputs were mistakenly assigned incorrect surrogate freight values based on incorrect freight distances. We have determined that these errors also meet the definition of a ministerial error. For a more detailed analysis, *see* the *Ministerial Error Memo.* We notified the U.S. International Trade Commission (ITC) of the changes in the margins resulting from the Department's corrections of its ministerial errors on October 26, 2001.

On November 13, 2001, in accordance with section 735(d) of the Act, the ITC notified the Department that a U.S. industry is materially injured within the meaning of section 735(b)(1)(A) of the Act by reason of imports of certain hot-rolled carbon steel flat products from Romania.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service (U.S. Customs) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of certain hot-rolled carbon steel flat products from Romania. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after May 3, 2001, the date of publication of the preliminary determination in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register,** U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the

[1] The respondents are Sidex, S.A. (Sidex), Sidex Trading SRL, Sidex International Plc (collectively, the Sidex Exporters), Metalexportimport S.A. (MEI), Metanef S.A. (Metanef) and Metagrimex Business Group S.A. (Metagrimex).

[2] These petitioners are Bethlehem Steel Corporation, LTC Steel Company, Inc., National Steel Corporation, and United States Steel LLC.

estimated weighted-average dumping margins listed below.

Exporter/manufacturer	Weighted-average margin percentage
Sidex Trading, SRL & Sidex International, Plc.	16.34
Metanef, S.A.	21.59
Metagrimex, S.A.	16.29
Metalexportimport,S.A.	18.04
Romania-Wide	88.62

This notice constitutes the antidumping duty order with respect to certain hot-rolled carbon steel flat products from Romania, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: November 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29674 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper review.

SUMMARY: The Department of Commerce has received a request for a new shipper review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India issued on February 9, 1994 (59 FR 5994). In accordance with our regulations, we are initiating a new shipper review covering Metal Forgings Private Limited/Metal Rings and Bearing Races Limited (Metal Forgings).

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Michael Heaney, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5222 or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (2001).

Background

The Department received a timely request, in accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(b) of the Department's regulations, for a new shipper review of the antidumping duty order on flanges from India, which has a February anniversary date. (*See* Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value, 59 FR 5994 (February 9, 1994). *See also* letter to the Secretary of Commerce from law firm of Miller & Chevalier, August 31, 2001, requesting a new shipper review.

Initiation of Review

Pursuant to 19 CFR 351.214(b), Metal Forgings certified in its August 31, 2001 submission that it did not export subject merchandise to the United States during the period of the investigation (POI) (July 1, 1992 through December 31, 1992), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. Metal Forgings submitted documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume shipped, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Tariff Act and § 351.214(d) of the Department's regulations, we are initiating a new shipper review of the antidumping duty order on flanges from India. This review covers the period January 1, 2001 through July 31, 2001. We have defined the period of review in order to include the reported dates of sale and shipment and the estimated date of entry. We intend to issue the final results of the review no later than 180 days from the date of publication of this notice.

In accordance with 19 CFR 351.214(e), effective on the date of publication of this notice, we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by Metal Forgings, until the completion of the review.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act (19 U.S.C. 1675(a)) and § 351.214 of the Department's regulations.

Dated: November 23, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–29672 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Extension of the Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from Italy. This review covers the period January 4, 1999 through June 30, 2000.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0165.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On September 6, 2000, the Department initiated an antidumping duty administrative review for the period of January 4, 2000 through June 30, 2001 (65 FR 58733). The Department published its preliminary results on August 8, 2001 (66 FR 41517).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary determination, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable because this review involves certain complex issues, including respondent's request for a constructed export price offset and numerous affiliated entities.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 30 days until January 7, 2002.

Dated: November 23, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–29670 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper reviews of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: In response to requests from Peer Bearing Company—Changshan and Yantai Timken Company Limited, the Department of Commerce is conducting new shipper reviews of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. These reviews cover these companies' entries of tapered roller bearings and parts thereof, finished and unfinished, to the United States during the period June 1, 2000 through November 30, 2000 for Yantai Timken Company Limited and June 1, 2000 through January 31, 2001 for Peer Bearing Company—Changshan.

We have preliminarily found that, during the periods of review, Peer Bearing Company—Changshan and Yantai Timken Company Limited have made sales below normal value. The preliminary results are listed below in the *Preliminary Results of the Reviews* section. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the constructed export price and normal value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189, or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department of Commerce's (''the Department'') regulations are to 19 CFR part 351 (2000).

Background

On December 28, 2000, Peer Bearing Company—Changshan (''CPZ'') requested that we conduct a new shipper review. On December 29, 2000, a similar request was made by Yantai Timken Company Limited (''Yantai Timken''). We published the notice of initiation for these new shipper reviews on January 31, 2001 (66 FR 8385) with a period of review (''POR'') covering June 1, 2000 through November 30, 2000 for Yantai Timken and CPZ . On May 9, 2001, the Department expanded CPZ's POR through January 31, 2001. *See* Memorandum to Susan Kuhbach: ''Expansion of the Period of Review,'' dated May 9, 2001, on file in the Department's Central Records Unit (''CRU''), in room B–099 of the main Commerce building.

On January 26, 2001, we sent out antidumping questionnaires to both Yantai Timken and CPZ. We received responses to these questionnaires from both companies in February and March 2001. We issued and received responses to supplemental questionnaires in April and May 2001.

Continuation of New Shipper Review

In a letter dated October 26, 2001, the petitioner submitted comments urging the Department to discontinue the new shipper review of CPZ. Due to the proprietary nature of these comments, we are unable to restate them here.

We have analyzed the petitioner's comments. In accordance with 19 CFR 351.214(f), the Department may rescind a new shipper review if: (1) There has not been an entry and sale to an unaffiliated customer in the U.S. of subject merchandise, or (2) if a party withdraws its request for review not later than 60 days after the date of publication of notice of initiation of the requested review. CPZ does not meet either of these criteria for discontinuing a new shipper review. Therefore, the Department is not rescinding the new shipper review of CPZ.

Scope of the Order

Merchandise covered by this order includes tapered roller bearings (''TRBs'') and parts thereof, finished and unfinished, from the People's Republic of China (''PRC''); flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by CPZ and Yantai Timken, using standard verification procedures, including onsite inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public

versions of the verification reports that are available in the Department's CRU. For the verification report of Yantai Timken, *see* Memorandum to John Brinkmann: ''Yantai Timken Company Limited Verification Report,'' dated September 26, 2001. For the report of CPZ, *see* Memorandum to John Brinkmann: ''Peer Bearing Company—Changshan Verification Report,'' dated October 3, 2001.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy (''NME'') country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRB industry is a market-oriented industry. Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act.

We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities. To establish whether a company operating in an NME country 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) (''*Sparklers*''), as amplified by 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''). As shown below, CPZ and Yantai Timken meet both the *de jure* and *de facto* criteria and are entitled, therefore, to a separate rate. Accordingly, we preliminarily determine to apply a rate separate from the PRC rate to CPZ and Yantai Timken.

De Jure Analysis

The Department considers three factors which support, though do not require, a finding of *de jure* absence of governmental control. These factors include: (1) An absence of restrictive stipulations associated with the 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 PORs, both Yantai Timken and CPZ were joint ventures formed under the laws of the PRC and controlled by a board of directors. Yantai Timken was a joint venture majority owned by The Timken Company, with a minority interest held by Yantai Bearing Factory. Yantai Bearing Factory is a state-owned company administered by the Yantai Machinery Bureau, which is under the Yantai municipal government. CPZ is also a joint venture with majority interest held by a U.S. company and minority interest held by a PRC company (that is not a state-owned enterprise).

Information submitted during this review indicates that Yantai Bearing Factory is owned ''by all of the people.'' In *Silicon Carbide* (at 22586), we found that the PRC central government had devolved control of state-owned enterprises, *i.e.,* enterprises owned ''by all of the people.'' As a result, we determined that companies owned ''by all of the people'' were eligible for individual rates if they met the criteria developed in *Sparklers* and *Silicon Carbide,* as described above.

Yantai Timken and CPZ have placed documents on the record that they claim demonstrate the absence of *de jure* governmental control. Additionally, in prior TRB cases, the Department has analyzed similar PRC laws and regulations, and found that they establish an absence of *de jure* control.

Yantai Timken's and CPZ's separation from the government is explicitly shown under the provisions of Article 3 of the Sino-Foreign Joint Venture Law of the People's Republic of China which grants companies ''the right to do business and conduct business management activities independently.'' The business licenses issued to Yantai Timken and CPZ authorize these companies to make domestic and export sales of tapered roller bearings as outlined in their respective business scopes.

Other laws placed on the record in this case—the ''Law of the People's Republic of China on Foreign-Capital Enterprises,'' effective April 12, 1986 (''*1986 Law*''); ''Regulations of the PRC for Controlling the Registration of Enterprises as Legal Persons,'' adopted on May 13, 1988 (''*1988 Regulations*''); and ''Company Law of the PRC,'' effective July 1, 1994 (''*1994 Law*'')—also demonstrate a lack of *de jure* governmental control. The 1986 Law states that the government will not nationalize or requisition any enterprise with foreign capital allowing companies to facilitate their own business within the laws of the PRC. Chapter X of the *1988 Regulations* discusses supervision and control, and allows companies to conduct business operations as legal persons in line with the items of registration and in accordance with company articles of association and contracts. The *1994 Law* places responsibility for profits and losses with each company, further demonstrating lack of *de jure* control.

There is no indication from the company responses that the subject merchandise is listed on any governmental list of export provisions or export licensing. In addition, there are no reported export quotas regarding the subject merchandise. Consistent with *Silicon Carbide,* we preliminarily determine that there is an absence of *de jure* governmental control over Yantai Timken and CPZ's export pricing and marketing decisions.

De Facto Analysis

The Department uses four factors to determine *de facto* absence of government control: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide,* 59 FR at 22587, and *Sparklers,* 56 FR at 20589).

The following record evidence, which is contained in CPZ's and Yantai Timken's questionnaire responses and the Department's company-specific verification reports, demonstrates a lack of *de facto* government control over the export activities of both companies.

Both Yantai Timken and CPZ have asserted that they establish their own export prices. However, in order to pass the subject merchandise through PRC Customs, both companies are required to have a stamp of approval from their local Chamber of Commerce confirming that the company-established price is above a minimum. The authority of any PRC Chamber of Commerce to review prices for minimum values derives from the ''Interim Provisions on Implementing Seal upon Price Preview Process for Export Price Control on Certain Key Merchandise.'' During verification, each company stated that it was never prevented from exporting subject merchandise due to the level of its selling price. Additionally, according

to their responses, neither company coordinated or consulted with other exporters regarding its pricing.

The board of directors of Yantai Timken controls the company and chooses the general manager. Other high-level officials are nominated by the general manager and approved by the board. The general manager and the vice-managers of CPZ are appointed by the company's board of directors. Outside of board approval, the general manager may appoint mid-level management and make daily routine manufacturing and merchandise decisions. Although both companies report the board members and the appointed managers to the PRC government, there is no evidence that any government authority controls the selection process or has rejected senior managers selected.

CPZ's and Yantai Timken's sources of funds are their own respective revenues or bank loans. They have sole control over, and access to, their bank accounts, which are held in CPZ's and Yantai Timken's own names. Furthermore, there are no restrictions on the use of the respondents' revenues or profits, including export earnings.

The general managers of both companies have the right to negotiate and enter into contracts, and may delegate this authority to other employees within the companies. There is no evidence that this authority is subject to any level of governmental approval.

This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of Yantai Timken and CPZ. Consequently, we preliminarily determine that Yantai Timken and CPZ have met the criteria for the application of separate rates.

Constructed Export Price

For all sales made by CPZ and Yantai Timken to the United States, we used constructed export price (''CEP'') in accordance with section 772(b) of the Act. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in 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 sections 772(c) and (d) of the Act.

We calculated CEP based on the packed, ex-warehouse prices from CPZ's and Yantai Timken's U.S. subsidiaries to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for international freight, foreign brokerage and handling, foreign inland freight, marine insurance, customs duties, U.S. brokerage, U.S. warehousing, and U.S. inland freight. In accordance with 772(d)(1) of the Act, we made further deductions from the starting price for CEP for the following selling expenses that related to economic activity in the United States: commissions, credit expenses, further manufacturing, repacking costs, and indirect selling expenses (including inventory carrying costs). For CPZ, we adjusted upwards its reported indirect selling expenses. For more information, *see Preliminary Results Calculation Memorandum for CPZ* (November 20, 2001). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit. For information on how profit was calculated, *see* ''Overhead, SG&A Expenses, and Profit'' in the ''*Normal Value*'' section below.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production (''FOP'') methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate on the basis of the criteria set out in 19 CFR 351.408(b). For further discussion of our surrogate selection *see* Memorandum to John Brinkmann from Jeff May, ''Antidumping Duty Investigation of TRBs and Parts, Thereof, Finished and Unfinished from the PRC: Nonmarket Economy Status and Surrogate Country Selection,'' dated January 29, 2001; and Memorandum to Susan Kuhbach, ''Selection of a Surrogate Country and Steel Value Sources'' dated November 20, 2001 (''*Steel Values Memo*'').

We used publicly available information on Indian imports and exports to India to value the various factors. Pursuant to the Department's FOP methodology, we valued the respondents' reported FOP by multiplying them by the values described below. For a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results'' (''*FOP Memo*''), dated November 20, 2001, which is on file in the Department's CRU.

1. *Steel Inputs.* For hot-rolled alloy steel bars used in the production of cups, consistent with *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) (''*TRBs XIII*''), we used an adjusted weighted-average of Japanese export values to India from the Japanese Harmonized Schedule (''HS'') category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. For a further discussion of selection of steel value sources, *see* the *Steel Values Memo.*

As in previous administrative reviews in this proceeding, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

CPZ states that it manufactured the subject merchandise under review using steel purchased from a market economy producer. In accordance with 19 CFR 351.408(c)(1), we generally value steel inputs using the actual price reported for directly imported inputs from a market economy. However, in *TRBs XIII*, we found a reasonable basis to believe or suspect that certain market economy steel inputs purchased by PRC TRB manufacturers and used to manufacture TRBs were subsidized. Consistent with our treatment of subsidized inputs in *TRBs XIII*, we have not used the actual prices paid by CPZ for steel which we have continuing reason to believe or suspect is subsidized. Instead, we relied on surrogate values. (*See* individual company calculation memoranda for a more detailed company-specific discussion of this issue.)

We valued scrap recovered from the production of cups, using Indian import statistics from Indian HS category 7204.2909.

Because this information is contemporaneous with the current PORs, we made no further adjustments to the steel input data.

2. *Labor.* 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet website at *www.ia.ita.doc.gov/wages.*

3. *Overhead, SG&A Expenses, and Profit.* For factory overhead, we used information obtained from the fiscal year 1999–2000 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general and administrative (''SG&A'') expenses as percentages of direct inputs and applied these ratios to each producer's direct input costs. These expenses were calculated exclusive of labor and electricity, but included employer provident funds and welfare expenses not reflected in the Department's regressed wage rate. This is consistent with the methodology we utilized in *TRBs XIII.* For profit, we totaled the reported profit before taxes for the five Indian bearing producers and divided it by the total calculated cost of production (''COP'') of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. *Packing.* We calculated surrogate values for packing materials reported by each company (*e.g.*, wooden pallet, plastic bag, steel strip) using import statistics reported in *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports by Commodity* (April 2000 through January 2001). We multiplied these surrogate values by the usage factor reported by each company to calculate packing costs.

5. *Electricity.* Consistent with *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001), we calculated our surrogate value for electricity based on a simple average of the 1998/1999 rates for the ''industrial'' category listed for 19 Indian states or electricity boards. The source of this data was the *Energy Data Directory and Yearbook* published by Tata Energy Research Institute. We adjusted the electricity value to the PORs using the Reserve Bank of India electricity-specific price index.

6. *Foreign Inland Freight.* We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Notice of Preliminary Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 116 (January 3, 2000) (''*Bulk Aspirin from the PRC*''). We valued rail freight using two November 1999 rate quotes for domestic bearing quality steel shipments within India that were also used in *Bulk Aspirin from the PRC.* Because this information is not contemporaneous with the current PORs, we adjusted the freight rate to the PORs using the Indian wholesale price index (''WPI'').

7. *Ocean Freight.* We calculated a value for ocean freight based on May 2000 rate quotes from Maersk Inc. Because this information is contemporaneous with the current PORs, no further calculations were necessary.

8. *Marine Insurance.* We calculated a value for marine insurance based on the CIF value of shipped TRBs. This rate was obtained for *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) through queries made directly to an international marine insurance provider. We adjusted the marine insurance rate to the PORs using the U.S. purchase price index.

9. *Brokerage and Handling.* We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the current PORs, we adjusted the brokerage and handling rate to the PORs using the Indian WPI.

Preliminary Results of the Reviews

We preliminarily determine that the following dumping margins exist for the period June 1, 2000 through November 30, 2000 for Yantai Timken and June 1, 2000 through January 1, 2001 for CPZ:

Exporter/manufacturer	Weighted-average margin percentage
CPZ	1.76
Yantai Timken	3.84

The above deposit rates will be effective upon publication of the final results of these new shipper reviews for all shipments of TRBs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will issue the final results of these new shipper reviews within 90 days from the issuance of these preliminary results. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of new shipper reviews, we will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's/customer's entries during the review period.

Effective upon publication of the final results of these new shipper reviews for all shipments by the PRC companies named above of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates will be the rates for these firms established in the final results of these reviews, except that, for exporters with *de minimis* rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC

country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These new shipper reviews and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–29633 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of meeting.

SUMMARY: The APAC will have a closed meeting on December 13, 2001 at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on November 21, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the December 13 meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: November 23, 2001.

Al Warner,

Acting Director, Office of Automotive Affairs.

[FR Doc. 01–29603 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government owned inventions available for licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the inventions is availble for exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these investions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaitherburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the license to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 99–013US.

Title: Efficient Microwave Magnetic Recording System.

Abstract: A microwave magnetic recording system can enable magnetic recording heads for computer disk drives to record efficiently at data rates in excess of 500×10^{-6} bits per second. The microwave magnetic recording system permits a recording head to operate a bandwidths which are limited only by the fundamental physical limits of electron spin precession rates. The system includes a microwave waveguide as the source of the energizing field, shaped write pulses to reduce overshoot due to ferromagnetic resonance, an rf ac bias signal to thermally excite the recording medium and thereby reduce the necessary recording field, higher moment magnetic head materials to increase the spin precession rate in a thin-film geometry, and hard-axis biased magnetic head materials to increase the flux conduction efficiency of thin pole tip materials. All of these features complement thin-film head designs or may be used with exotic planarized head structure.

NIST Docket Number: 00–010US.

Title: Reagents For Water Determination In Samples Containing Iodine-Reacting Interfering Substances.

Abstract: The present invention relates to reagents for water determination in materials containing iodine-reacting interfering substances. The reagents are use for corrrection of

results of Karl Fischer (KF) water determination in matters such as oils, drugs, cosmetic products, foodstuffs, chemical products and other polar- and non-polar materials containing iodine-reacting substances, which interfere with the Karl Fischer methods for water determination. The Reagents of the invention comprise iodine, an iodide and a buffer in mixture of solvents in which at lease one is a polar non-aqueous solvent and at least one is a non-polar non-aqueous solvent.

NIST Docket Number: 03–033US.

Title: Electrochemical Fluidized Bed Coating of Powders.

Abstract: A method for coating particulate substrate materials is provided which comprises (a) combining particles and an electrolyte in an imperforate container; (b) vibrating the container to generate a fluidized bed of particles in the electrolyte; and (c) electrochemically depositing a coating on the particles from reactants in the electrolyte. An apparatus for coating particles is also provided which comprises an imperforate containere for receiving particles to be coated and an electrolyte and a device for generating afluidized bed in the container, the device being operatively associated with the container.

Dated: November 20, 2001.

Karen H. Brown,

Deputy Director.

[FR Doc. 01–29664 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112301D]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meeting; including a notice of intent to prepare an Environmental Impact Statement (EIS), convene a scoping meeting, and request for public comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Ecosystem Planning Committee, its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (Commission) Summer Flounder, Scup and Black Sea Bass Board, its Law Enforcement Committee, and Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, December 11, 2001 to Thursday, December 13, 2001. On Tuesday, December 11, 2001, the Ecosystem Planning Committee will meet from 1–4 p.m. On Wednesday, December 12, 2001, the Council and Commission will meet from 8-5 p.m. On Thursday, December 13, 2001, the Law Enforcement Committee will meet from 7:30–8 a.m. The Executive Committee will meet from 8-9 a.m. The Council will meet from 9–5 p.m.

ADDRESSES: This meeting will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA; telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for the committees and Council meetings are: Identify Council/Commission priorities for 2003 quota set-aside species, refine criteria to be used in evaluating proposals received in response to 2003 Request for Research Proposals, recommend adjustments to weights to be applied to evaluation criteria, discuss need for and timing of pre-proposal process; review and discuss Monitoring Committee's recommendations on summer flounder, scup, and black sea management measures, review and discuss Advisory Panels recommendations on summer flounder, scup, and black sea bass management measures, develop and approve management measures for 2002 summer flounder, scup, and black sea bass recreational fisheries; review the Council's 2002 meeting calendar, i.e., changes to meeting locations and times; initiate Fisheries Achievement Award process for second half of 2001; the Council intends to prepare an EIS under the National Environmental Policy Act, to assess the potential effects on the human environment of its proposed action to initiate Amendment 9 to the Fishery Management Plan for Atlantic mackerel, squid, and butterfish fisheries under the Magnuson-Stevens Fishery Conservation and Management Act. The amendment currently would extend the moratorium on entry into the *Illex* fishery, allow for specification of management measures for multiple years for all four species in the management unit, and provide analyses of fishing gear impacts on essential fish habitat (EFH) for all four species; review proposed management changes previously mentioned in Amendment 9 to the Squid, Mackerel, and Butterfish FMP and fishing gear impacts on EFH, i.e., remedy EFH disapprovals identified in Squid, Mackerel, and Butterfish FMP Amendment 8; hear organizational and committee reports.

Although non-emergency issues not contained in this agenda may come before the Council and the Commission for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: November 26, 2001.

Richard W. Surdi,

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

[FR Doc. 01–29642 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112601A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Marine Protected Areas Committee in December, 2001. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, December 13, 2001, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Best Western Inn, 401 Lowell Avenue, Haverhill, MA 01832; telephone: (978) 373–1511.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: Several individuals involved in the national marine protected area (MPA) initiative will brief the Committee on recent developments and on-going programs related to MPAs. The Committee will discuss the Executive Order on MPAs (E.O. 13158) and the role of the Council in regards to MPAs. The Committee will begin the development of a Council policy and strategy on MPAs.

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 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 26, 2001.

Richard W. Surdi,

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

[FR Doc. 01–29639 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111301E]

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 Multi-Year Management Committee (GMMC) will hold a work session, which is open to the public.

DATES: The GMMC will meet Thursday, December 13, 2001, from 1 p.m. until 5 p.m; and Friday, December 14, 2001, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; 503–326–6352.

Council address:

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 the Council's request for a committee to scope multi-year management approaches for the West Coast groundfish fishery. Multi-year management of the groundfish fishery would be synchronized with a multi-year groundfish stock assessment schedule. Full accommodation of federal notice and comment requirements would also be incorporated into the multi-year cycle. This is the first meeting of the committee, and the primary purpose of the meeting is to refine the purpose and objectives of multi-year management, as well as initiate scoping of alternative approaches.

Although nonemergency issues not contained in the GMMC meeting agenda may come before the GMMC for discussion, those issues may not be the subject of formal GMMC action during the meeting. GMMC 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 GMMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: November 26, 2001.

Richard W. Surdi,

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

[FR Doc. 01–29643 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Performance Review Board Membership

The Technology Administration Performance Review Board (TA PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the TA PRB and supersedes the list published in **Federal Register** Document 01–23214, Vol. 66, No. 181, page 48118, dated September 18, 2001.

Cathleen Campbell (C), Director of International Technology, Policy and Programs, Technology Administration, Washington, DC 20230, Appointment Expires: 12/31/02.

Cynthia Clark (C), Associate Director for Methodology & Standards, Census Bureau, Washington, DC 20233, Appointment Expires: 12/31/01.

Gordon W. Day (C), Chief, Optoelectronics Division, Electronics and Engineering Laboratory Office, National Institute of Standards & Technology, Boulder, CO 80303, Appointment Expires: 12/31/01.

Dale E. Hall (C), Deputy Director, Materials Science, and Engineering Laboratory, Materials Science and Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8500, Appointment Expires: 12/31/01.

Daniel Hurley (C), Director of Communication and Information, Infrastructure Assurance Program, National Telecommunications and Information Administration, Washington, DC 20230, Appointment Expires: 12/31/03.

Robert F. Moore (C), Deputy Director for Safety and Facilities, National Institute of Standards & Technology, Gaithersburg, MD 20899–3200, Appointment Expires: 12/31/03.

Dennis Swyt (C), Chief, Precision Engineering Division, Manufacturing Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8210, Appointment Expires: 12/31/02.

Kathleen Taylor (C), Chief, Employment and Labor Law Division, Assistant General Counsel for Administration,

Office of the General Counsel, Office of the Secretary, Washington, DC 20230, Appointment Expires: 12/31/03.

Susan Zevin (C), Deputy Director, Information Technology Laboratory, Information Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899–8900, Appointment Expires: 12/31/02.

Dated: November 20, 2001.

Phillip J. Bond,

Under Secretary of Commerce for Technology, Technology Administration, Department of Commerce.

[FR Doc. 01–29675 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Burma (Myanmar)

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

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, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, a previously restrained category has been eliminated and the limit for the remaining products has been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2002 period.

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 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Burma (Myanmar) and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	101,763 dozen.
342/642	27,486 dozen.
347/348	142,569 dozen.
351/651	43,198 dozen.
448	2,508 dozen.
647/648	26,081dozen.

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 2001 shall be charged to the applicable category limits for that year (see directive dated January 24, 2001) 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.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

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,

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29631 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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

Egypt and exported during the period January 1, 2002 through December 31, 2002 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 2002 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 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group	
218–220, 224–227, 313–O [1], 314–O [2], 315–O [3], 317–O [4] and 326–O [5], as a group	162,117,786 square meters.
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	38,142,697 square meters.
220	38,142,697 square meters.
224	38,142,697 square meters.
225	38,142,697 square meters.
226	38,142,697 square meters.
227	38,142,697 square meters.
313–O	70,040,920 square meters.
314–O	38,142,697 square meters.
315–O	44,791,312 square meters.
317–O	38,142,697 square meters.
326–O	2,508,000 square meters.
Levels not in a group	
300/301	15,120,341 kilograms of which not more than 4,742,270 kilograms shall be in Category 301.
338/339	4,208,146 dozen.
340/640	1,743,376 dozen.
369–S [6]	2,207,655 kilograms.
448	20,481 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

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 2001 shall be charged to the applicable category limits for that year (see directive dated October 26, 2000) 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,

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29632 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

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 reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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 India and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified or eliminated and a limit has been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 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 65 FR 82328,

published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	21,586,018 square meters.
219	94,504,814 square meters.
313	57,756,193 square meters.
314	11,250,573 square meters.
315	18,896,455 square meters.
317	50,864,710 square meters.
326	11,560,163 square meters.
334/634	201,096 dozen.
335/635	895,277 dozen.
336/636	1,290,776 dozen.
338/339	5,009,403 dozen.
340/640	2,688,391 dozen.
341	5,376,759 dozen of which not more than 3,226,053 dozen shall be in Category 341–Y [1].
342/642	1,812,939 dozen.
345	288,577 dozen.
347/348	928,446 dozen.
351/651	383,220 dozen.
363	67,457,452 numbers.
369–S [2]	1,023,174 kilograms.
641	2,110,724 dozen.
647/648	1,225,678 dozen.
Group II	
200, 201, 220, 224–227, 237, 239pt. [3], 300, 301, 331pt. [4], 332, 333, 352, 359pt. [5], 360–362, 603, 604, 611–620, 624–629, 631pt. [6], 633, 638, 639, 643–646, 652, 659pt. [7], 666pt. [8], 845, 846 and 852, as a group	143,071,068 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.4810, 6116.10.1720, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

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 2001 shall be charged to the applicable category limits for that year (see directive dated December 13, 2000) 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.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

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,
Jim Bennett,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29629 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–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 Textiles and Textile Products Produced or Manufactured in the Republic of Korea

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

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, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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 Korea and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002

(see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified or eliminated and certain limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 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 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 1, 2002, 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 textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–220, 224–V [1], 224–O [2], 225–227, 300–326, 360–363, 369pt., [3], 400–414, 469pt., [4], 603, 604, 611–620, 625-629, 666pt. [5], as a group	248,235,339 square meters equivalent.
Sublevels within Group I	
200	536,720 kilograms.
201	3,113,606 kilograms.
218	10,879,484 square meters.
219	9,906,522 square meters.
224–V	12,488,686 square meters.
300/301	3,649,502 kilograms.
313	59,474,510 square meters.
314	33,160,379 square meters.
315	20,029,567 square meters.
317/326	22,102,274 square meters.
363	1,273,696 numbers.
410	3,776,838 square meters.
604	466,128 kilograms.
611	4,351,794 square meters.
613/614	7,252,989 square meters.
617	6,014,675 square meters.
619/620	100,521,986 square meters.
624	10,614,131 square meters.
625/626/627/628/629	18,567,652 square meters.
Group II	
237, 239pt. [6], 331pt. [7], 332–348, 351, 352, 359pt., 433–438, 440–448, 459–W [8], 459pt. [9], 631pt. [10], 633–648, 651, 652, 659–H [11],659–S [12] and 659pt. [13], as a group	568,345,209 square meters equivalent.
Sublevels within Group II	
237	72,174 dozen.
239pt.	291,836 kilograms.
333/334/335	326,385 dozen of which not more than 166,820 dozen shall be in Category 335.
336	68,975 dozen.
338/339	1,450,598 dozen.
340	754,311 dozen of which not more than 391,663 dozen shall be in Category 340–D [14].
341	200,297 dozen.
342/642	262,334 dozen.
345	140,923 dozen.
347/348	536,720 dozen.
351/651	275,588 dozen.
352	214,455 dozen.
433	14,372 dozen.
434	7,371 dozen.
435	37,462 dozen.
436	15,859 dozen.
438	63,582 dozen.
440	204,872 dozen.
442	53,592 dozen.
443	322,056 numbers.
444	58,400 numbers.
445/446	53,915 dozen.
447	91,983 dozen.
448	37,703 dozen.
459–W	101,987 kilograms.
631pt.	73,592 dozen pairs.
633/634/635	1,384,034 dozen of which not more than 156,946 dozen shall be in Category 633 and not more than 584,890 dozen shall be in Category 635.
636	297,611 dozen.
638/639	5,388,526 dozen.
640–D [15]	3,234,819 dozen.
640–O [16]	2,695,682 dozen.
641	1,093,330 dozen of which not more than 41,297 dozen shall be in Category 641–Y [17].
643	809,992 numbers.
644	1,218,597 numbers.
645/646	3,705,449 dozen.
647/648	1,412,150 dozen.
659–H	1,469,293 kilograms.
659–S	215,889 kilograms.
Level in Group III	
852, as a group	13,291,359 square meters equivalent.
Levels not in a group	
845	2,315,056 dozen.
846	823,868 dozen.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 459–W: only HTS number 6505.90.4090.

[9] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[10] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[11] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[14] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[15] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[16] 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

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 2001 shall be charged to the applicable category limits for that year (see directive dated November 14, 2000) 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.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
369–L/670–L/870	3.8 <—(for changes to year 2001 limit for group VI)
633/634/635	34.1
638/639	12.96

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,

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29624 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Levels for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing levels under the North America Free Trade Agreement.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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.

In order to implement Annex 300–B of the North American Free Trade Agreement (NAFTA), restrictions and consultation levels for certain cotton, wool and man-made fiber textile products from Mexico are being established for the period beginning on January 1, 2002 and extending through December 31, 2002.

These restrictions and consultation levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the NAFTA. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under Harmonized Tariff Schedule of the United States item 9802.00.90.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to implement levels for the 2002 period.

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 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 North American Free Trade Agreement (NAFTA), between the Governments of the United States, the United Mexican States and Canada, you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels:

Category	Twelve-month limit
410	397,160 square meters.
433	11,000 dozen.
443	205,286 numbers.
611	1,267,710 square meters.

The levels set forth above are subject to adjustment pursuant to the provisions of Annex 300–B of the NAFTA.

Products in the above categories exported during 2001 shall be charged to the applicable category levels for that year (see directive dated October 26, 2000) to the extent of any unfilled balances. In the event the levels established for that period have been exhausted by previous entries, such products shall be charged to the levels set forth in this directive.

The foregoing levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the NAFTA. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under Harmonized Tariff Schedule of the United States item 9802.00.90.

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,

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29630 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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 Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memorandum of Understanding (MOU) dated July 13, 2000 between the Governments of the United States and Nepal establish limits for the period January 1, 2002 through December 31, 2002.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 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 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and the Memorandum of Understanding dated July 13, 2000 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	325,259 dozen.
340	427,070 dozen.
341	1,186,561 dozen.
342/642	372,736 dozen.
347/348	961,951 dozen.
363	8,698,466 numbers.
369–S [1]	1,043,347 kilograms.
640	214,942 dozen.
641	484,640 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 2, 2000) 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.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

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,

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29625 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202)

927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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 Oman and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, a certain previously restrained category has been eliminated and a certain limit has been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2002 period.

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 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	173,191 dozen.
335/635	334,869 dozen.
338/339	694,855 dozen.
340/640	334,869 dozen.
341/641	251,151 dozen.
347/348	1,197,157 dozen.
647/648	473,429 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 5, 2000) 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.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

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,
Jim Bennett,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29627 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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 Qatar and exported during the period January 1, 2002 through December 31, 2002 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 limits for the 2002 period.

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 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	642,173 dozen.
341/641	296,388 dozen.
347/348	731,089 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 2001 shall be charged to the applicable category limits for that year (see directive dated October 27, 2000) 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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29626 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

November 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

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 Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 2002 through December 31, 2002.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the period January 1, 2002 through December 31, 2002.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

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 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the period beginning on January 1, 2002 and extending through December 31, 2002, in excess of 56,309 dozen. [1]

Products in the above category exported during 2001 shall be charged to the applicable category limit for that year (see directive dated May 18, 2001) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

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 this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Jim Bennett,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29628 Filed 11–28–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41422 entitled Development of Technologies and Capabilities for Developing Coal, Oil, and Gas Energy Resources. The Department of Energy (DOE), National Energy Technology Laboratory (NETL), is conducting this solicitation to competitively seek cost-shared applications for research and development of technologies enabling development of energy resources needed to ensure the availability of affordable energy for the Nation's future.

DATES: Potential applicants are required to submit a brief, not to exceed four pages, pre-application. A response to the pre-applications either encouraging or discouraging submission of a comprehensive application will be communicated to the applicant within about 30 days of the closing date for the pre-application. All pre-applications must be submitted through the Industry Interactive Procurement System (IIPS) system in accordance with the instructions in the solicitation. The solicitation will be available on DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement

System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about November 15, 2001. The deadline for submission of pre-applications and comprehensive applications for each of the three evaluation periods will be identified in the solicitation.

FOR FURTHER INFORMATION CONTACT: Larry D. Gillham, MS 921–162, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940, E-mail Address: *gillham@netl.doe.gov,* Telephone Number: (412) 386–5817.

SUPPLEMENTARY INFORMATION: Through this solicitation, NETL seeks applications in the following fourteen (14) separate (i.e., stand alone) Areas of Interest:

Coal & Environmental Systems

(1) Combustion Systems
(2) Gasification Technologies
(3) Environmental & Water Resources
(4) Sequestration
(5) Power Systems Advanced Research
(6) Vision 21

Strategic Center for Natural Gas

(7) Fuel Cells
(8) Gas Exploration, Production & Storage
(9) Infrastructure Reliability

Fuels & Energy Efficiency

(10) Natural Gas Processing
(11) Transportation Fuels & Chemicals
(12) Fuels Advanced Research

Petroleum

(13) Oil and Gas Environmental: Upstream
(14) Oil and Gas Environmental: Downstream Processing, Heavy Oil Upgrading Technologies and Fundamental Science for Enhanced Environmental Performance at Refineries

Applicants must select and target only one (1) Area of Interest per application. DOE anticipates the award of multiple cost-sharing cooperative agreements under each Area of Interest. Approximately $17 million of DOE funds is planned for this solicitation which will cover all Areas of Interest and all evaluation periods. It is anticipated that a total of 20–30 awards will be made as a result of this solicitation. In accordance with Section 3002 of the Energy Policy Act (EPAct), a minimum of 20% cost share will be required for each project. This solicitation includes multiple closing dates and uses a Two-Step Application process for each closing date. Under Step 1, applicants will submit a pre-application for consideration. After agency consideration, the applicant will receive a notification that the submission of a comprehensive application is either encouraged or discouraged. After notifications through the IIPS system, applicants will have about 30 days to prepare and submit the comprehensive application. Offerors are hereby notified that comprehensive applications received on or before the pre-application due date will be discarded prior to evaluation, and will not be evaluated. Applications submitted by, or on behalf of: (1) Another Federal agency (OFA); (2) a Federally Funded Research and Development Center (FFRDC) sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management and Operating (M&O) contractor will not be eligible for an award under this solicitation. OFAs, FFRDCs and M&Os will not be eligible to respond directly to this solicitation, nor may they participate as a teaming member or subcontractor under any application. Applications from OFAs, FFRDCs or M&Os, or applications which include an OFA, FFRDC or M&O as a team member or subcontractor will not be evaluated.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on November 1, 2001.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 01–29634 Filed 11–28–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–27–000]

Florida Gas Transmission Company; Notice of Certificate Application

November 23, 2001.

Take notice that on November 15, 2001, Florida Gas Transmission Company (Florida Gas), 1400 Smith Street, Houston, Texas 77002, filed an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (the Commission) Rules and Regulations thereunder. Florida Gas requests authorization to: 1) construct, install, own, operate and maintain certain facilities to provide up to 85,356 dekatherms per day (Dth/d) of average annual incremental firm natural gas transportation service; and, 2) roll-in the costs associated with the proposed expansion of its facilities with Florida Gas' Incremental System under Rate Schedule FTS–2, all as more fully set forth in the application, which is on file with the Commission, and open for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Following its open seasons, Florida Gas contracted for firm transportation service with four shippers (Shippers): Orlando Utilities Commission (OUC); Reliant Energy Services, Inc.; and, two LDC's, South Florida Natural Gas, and, City of Leesburg.

The facilities will consist of: (i) *Mainline Expansions,* which involve improvements along Florida Gas's existing pipeline in Alabama, Florida, Louisiana, and Mississippi including (a) approximately 5.3 miles of 36-inch diameter pipeline loops (in Baldwin and Mobile Counties, Alabama), (b) approximately 20.1 miles of 30-inch diameter pipeline loops (in Bradford, Clay, Suwannee, and Washington Counties, Florida), (c) compression increases totaling 18,600 horsepower at ten locations (in Mobile County,

Alabama; Citrus, Gadsden, Gilchrist, Orange, Santa Rosa, Taylor, and Washington Counties, Florida; Washington Parish, Louisiana; and Perry County, Mississippi), and (d) associated mainline valves, piping, and appurtenant pipeline facilities; and (ii) *Other Expansions,* which include (a) approximately 1.3 miles of 6-inch diameter pipeline lateral loop in Lake County, Florida; (b) approximately 1.4 miles of 16-inch lateral loop extension in Brevard County, Florida; and, (c) approximately 5.2 miles of 16-inch pipeline lateral in Orange County, Florida from Florida Gas' existing 26-inch pipeline (Stanton Lateral), and (d) associated valves and appurtenant pipeline facilities. Florida Gas will construct one new meter station for service to OUC from the Stanton Lateral pursuant to its Blanket Certificate issued in Docket No. CP82–553, 21 FERC ¶ 62,235.

Florida Gas requests that the Commission issue a preliminary determination on non-environmental issues by March 1, 2002 and a final determination on all certificate issues on or before September 1, 2002 so: (1) construction can begin by December 1, 2002; (2) deliveries can commence to Shippers by June 1, 2003; and, (3) the remaining facilities, including those essential to OUC's Plant Stanton's commercial operation, can be operational by November 1, 2003. The cost of the facilities is estimated to be approximately $105.4 million. Incremental firm transportation service of up to 121,000 Dth/d summer peak volumes (85,356 Dth/d average annual) will be rendered to the Shippers pursuant to Florida Gas' Rate Schedule FTS–2. The Shippers will pay incremental rates to compensate Florida Gas for the costs of the Phase VI Expansion Project facilities.

Questions regarding this filing should be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Florida Gas Transmission Co., 1400 Smith Street, Suite 3997, P.O. Box 1188, Houston, TX 77251–1188 or call (713) 853–6549.

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 December 13, 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29619 Filed 11–28–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–28–000]

International Transmission Company; Notice of Filing

November 23, 2001.

Take notice that on November 21, 2001, International transmission Company filed an Application for Authorization to Transfer Joint Open Access transmission tariff and Related Agreements pursuant to Section 203 of the Federal Power Act.

Since the Midwest ISO is scheduled to begin providing transmission service on January 1, 2002, International Transmission respectfully requested that the Commission grant a shortened (fourteen (14) day) notice period in this docket.

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 December 5, 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 Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29618 Filed 11–28–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–30–000, et al.]

Blythe Energy, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 20, 2001.

Take notice that the following filings have been made with the Commission:

1. Blythe Energy, LLC

[Docket No. EG02–30–000]

Take notice that on November 14, 2001, Blythe Energy, LLC (the Applicant), with its principal office at The Grace Building, 41st Floor, 1114 Avenue of the Americas, New York, NY 10036–7790, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of developing and operating an approximately 520 MW generating facility located in Blythe, California. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Southwest Power Pool, Inc.

[Docket No. ER02–57–000]

Take notice that on November 16, 2001, Southwest Power Pool, Inc. (SPP) submitted a notice of withdrawal of filing with the Federal Energy Regulatory Commission (Commission) a service agreement for Firm Point-to-Point Transmission Service with Southwestern Public Service Marketing.

A copy of the withdrawal filing was served on Southwestern Public Service Marketing as well as all parties included on the Commission's official service list established in this proceeding.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Calpine Construction Finance Company, L.P.

[Docket No. ER02–166–000]

Take notice that on November 16, 2001, Calpine Construction Finance Company, L.P. (CCFC) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Withdrawal of the amended Direct Power Transaction Confirmation under its market-based rate schedule in the above-referenced docket number, filed on October 24, 2001.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power & Light Company

[Docket No. ER01–2301–002]

Take notice that on November 16, 2001, Carolina Power & Light Company (CP&L) submitted its compliance filing in the above-captioned proceeding in accordance with Ordering Paragraph C of Carolina Power & Light Company, 97 FERC ¶ 61,063 (October 19, 2001).

Copies of the filing were served upon the official service list in this proceeding.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER01–2301–002]

Take notice that on November 16, 2001, Carolina Power & Light Company (CP&L) submitted its compliance filing in the above-captioned proceeding in accordance with Ordering Paragraph C of Carolina Power & Light Company, 97 FERC ¶ 61,063 (October 19, 2001).

Copies of the filing were served upon the official service list in this proceeding.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER01–602–012]

Take notice that on November 16, 2001, in compliance with the Federal Energy Regulatory Commission (Commission) letter Order dated October 17, 2001 Southern Company Services, Inc. (SCS), as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Companies), tendered for filing rate schedules compliant with Commission Order No. 614 for certain Southern Companies Rate Schedules. These Rate Schedules are Mississippi Power Company First Revised Rate Schedule FERC No. 145 and Southern Operating Companies First Revised Rate Schedule FERC No. 78.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Coral Canada US, Inc.

[Docket No. ER01–3017–001]

Take notice that on November 16, 2001, Coral Canada US, Inc. (Seller) filed with the Federal Energy Regulatory Commission (Commission) an amendment to its petition filed on September 5, 2001, which requested the Commission for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under subparts B and C of part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Inter-Power/AhlCon Partners, L.P.

[Docket No. QF87–632–006]

Take notice that on November 13, 2001, Inter-Power/AhlCon Partners, L.P., 2591 Wexford-Bayne Road, Suite 204, Sewickley, PA 15143 submitted for filing an application for Commission recertification as a qualifying small power production facility pursuant to section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Comment date: December 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29616 Filed 11–28–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–22–000, et al.]

UtiliCorp United Inc., et al.; Electric Rate and Corporate Regulation Filings

November 21, 2001.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. EC02–22–000]

Take notice that on November 15, 2001, UtiliCorp United Inc. filed with the Federal Energy Regulatory Commission (Commission) a supplement to its application for Commission approval pursuant to section 203 of the Federal Power Act and section 33 of the Commission's regulations for authorization to reacquire the approximately 10 percent of the shares of Aquila, Inc. held by the public.

Comment date: December 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. UtiliCorp United Inc.

[Docket No. EC02–24–000]

Take notice that on November 14, 2001, as supplemented on November 15, 2001, UtiliCorp United Inc. (UtiliCorp) filed with the Federal Energy Regulatory Commission (Commission) an application for approval of the transfer of operational control over certain specified transmission facilities of its Missouri Public Service, St. Joseph Light and Power and WestPlains Energy-Kansas divisions to the Midwest Independent System Operator, Inc. pursuant to section 203 of the Federal Power Act and section 33 of the Commission's regulations. The specified facilities were omitted from UtiliCorp's August 20, 2001 application in Docket No. EC01–142–000.

Comment date: December 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Mirant Zeeland, LLC

[Docket No. EG02–31–000]

Take notice that on November 16, 2001, Mirant Zeeland, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Mirant Zeeland is a Delaware limited liability company that intends to construct, own, and operate a 568 MW generation facility at a site in Zeeland, Michigan. Mirant Zeeland is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. San Diego Gas & Electric Company (Complainant, v. Sellers of Energy and Ancillary and Services Into Markets Operated By the California Independent System Operator and the California Power Exchange, Respondents, et al.)

[Docket Nos. EL00–95–051 and EL00–98–045]

Take notice that on November 7, 2001, and November 8, 2001 Errata, the California Independent System Operator Corporation (ISO) submitted a filing with the Federal Energy Regulatory Commission (Commission) to comply with the Commission's October 23, 2001 ''Order Accepting in Part and Rejecting in Part Portion of Compliance Filing Related to Outage Coordination,'' San Diego Gas & Electric Company, et al., 97 FERC ¶61,066.

The ISO states that it has served copies of this filing upon the Public Utilities Commission of the State of California, all parties of the official service lists maintained by the Secretary for Docket Nos. EL00–95–000, et al., and all entities that have entered into Participating Generator Agreements with the ISO.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. International Transmission Company

[Docket No. ER02–351–000]

Take notice that on November 16, 2001, International Transmission Company (ITC) tendered for filing with the Federal Energy Regulatory Commission (Commission) the Generator Interconnection and Operating Agreement between ITC and DTE East China LLC (the Agreement), as a service agreement under ITC's Open Access Transmission Tariff (FERC Electric Tariff, Original Volume No. 1) and is designated as Service Agreement No. 130. The Agreement provides the general terms and conditions for the interconnection and parallel operation of East China's electric generating facility located in East China township, Michigan. The Agreement shall continue from the effective date through the date on which the Facility permanently ceases commercial operations unless terminated earlier as permitted and provided for under the Agreement.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER02–352–000]

Take notice that on November 16, 2001, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement between Georgia Power and Southern Power Company (Southern Power) for Goat Rock CC Unit 2 (the Agreement), as a service agreement under Southern Operating Companies' Open Access transmission tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) and is designated as Service Agreement No. 417. The Agreement provides the general terms and conditions for the interconnection and parallel operation of Southern Power's electric generating facility located in Lee County, Alabama. The Agreement terminates forty (40) years from the effective date unless terminated earlier by mutual written agreement.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER02–353–000]

Take notice that on November 16, 2001 Commonwealth Edison Company (ComEd) submitted for filing two Form of Service Agreements for Firm Point-

To-Point Transmission Service between ComEd and Alliant Energy (Alliant), one Form of Service Agreement for Firm Point-To-Point Transmission Service between ComEd and Dynegy Power Marketing, Inc. (Dynegy), and five Form of Service Agreements for Firm Point-To-Point Transmission Service between ComEd and Exelon Generation Company, LLC (Exelon) under the terms of ComEd's Open Access Transmission Tariff (OATT). Copies of this filing were served on Alliant, Dynegy and Exelon.

ComEd requests an effective date of January 1, 2002, for the Service Agreements with Alliant, Dynegy and Exelon, and accordingly seeks waiver of the Commission's notice requirements.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER02–354–000]

Take notice that on November 16, 2001, the California Independent System Operator Corporation (ISO) tendered for filing First Revised Service Agreement No. 410 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and County Sanitation District No. 2 of Los Angeles County. The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests that the agreement be made effective as of August 22, 2001.

The ISO states that this filing has been served on County Sanitation District No. 2 of Los Angeles County and the California Public Utilities Commission.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER02–355–000]

Take notice that on November 16, 2001, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 35.13 of the Commission's Regulations, 18 CFR 35.13 (2000), a fully executed service agreement (Service Agreement) between NYSEG and Kaleida Health (Kaleida). Under the Service Agreement, NYSEG may provide capacity and/or energy to in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested wavier of the notice requirements that the Service Agreement becomes effective as of September 26, 2001. NYSEG has served a copy of this filing upon the New York State Public Service Commission and Kaleida.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER02–356–000]

Take notice that on November 16, 2001, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 35.13 of the Commission's Regulations, 18 CFR 35.13 (2000), a fully executed service agreement (Service Agreement) between NYSEG and Pro-Energy Development, LLC d/b/a Pro-Energy Resources (Pro-Energy). Under the Service Agreement, NYSEG may provide capacity and/or energy to Pro-Energy in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested wavier of the notice requirements that the Service Agreement becomes effective as of September 28, 2001. NYSEG has served a copy of this filing upon the New York State Public Service Commission and Pro-Energy.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Cleco Power LLC

[Docket No. ER02–357–000]

Take notice that on November 16, 2001, Cleco Power LLC (Cleco) filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Sale of Power and Energy with the City of Natchitoches, Louisiana as a long-term service agreement under Cleco's market based rates tariff. The Service Agreement is designated as Cleco Power LLC Service Agreement No. 26 to FERC Electric Tariff, Original Volume No. 2.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER02–358–000]

Take notice that on November 16, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Termination of the 1983 Interconnection Agreement between PG&E and Silicon Valley Power (SVP) on file with the Commission as First Revised PG&E Rate Schedule FERC No. 85 and a proposed Interconnection Agreement (IA) between PG&E and SVP. The IA supersedes the 1983 Interconnection Agreement and is intended to provide for the continued interconnection of the PG&E and SVP electric systems.

Copies of this filing have been served upon SVP, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. New York State Electric & Gas Corporation

[Docket No. ER02–359–000]

Take notice that on November 16, 2001, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 35.13 of the Commission's Regulations, 18 CFR 35.13 (2000), a fully executed service agreement (Service Agreement) between NYSEG and Wegman's Food Markets, Inc. (Wegman). Under the Service Agreement, NYSEG may provide capacity and/or energy to Wegmen in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested wavier of the notice requirements that the Service Agreement becomes effective as of September 28, 2001. NYSEG has served a copy of this filing upon the New York State Public Service Commission and Wegmen.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29617 Filed 11–28–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7110–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Voluntary Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Voluntary Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category, EPA ICR No. 2015.01. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before December 31, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 2015.01 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epa.gov,* or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2015.01. For technical information about the collection contact Mr. Ahmar Siddiqui by telephone at (202) 260–1826, or by e-mail at *siddiqui.ahmar@epa.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Voluntary Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category (EPA ICR No. 2015.01). This is a new collection.

Abstract: The Environmental Protection Agency (EPA) imposed minimum monitoring requirements on bleached papergrade kraft and soda (subpart B) mills under 40 CFR part 430 as part of the final Cluster Rules promulgated on April 15, 1998. See 63 FR 18504. These provisions require direct and indirect discharging subpart B mills to monitor their effluent for certain pollutants, including chloroform, at specified frequencies. See 40 CFR 430.02. EPA is considering promulgating an amendment to the Cluster Rules to allow direct and indirect discharging subpart B mills, for a particular fiber line, to demonstrate compliance with applicable chloroform limitations and standards under 40 CFR part 430 in lieu of the minimum monitoring requirements specified in 40 CFR 430.02 by voluntarily certifying two sets of circumstances. EPA proposed that amendment on April 15, 1998. See 61 FR 18796. First, the mill would need to certify that the fiber line(s) in question is/are not using elemental chlorine or hypochlorite as bleaching agents. Second, the mill would need to certify that the fiber line(s) in question maintain(s) certain process and operating conditions that the facility has demonstrated achieve compliance with applicable chloroform limitations. (The proposed rule would require mills wishing to employ the certification alternative to monitor for chloroform at the minimum frequency required by 40 CFR 430.02 for at least two years prior to being eligible to make the certification discussed above.) EPA is also considering requiring participating mills to submit a brief report summarizing the results of the initial compliance demonstration period and subsequently submit periodic certifications confirming that the participating fiber line(s) continues to operate within the range of process and operating conditions documented during the initial compliance demonstration period.

The burden associated with these additional voluntary reporting requirements is expected to be offset by a substantial savings in burden and costs that would otherwise be incurred, pursuant to the minimum monitoring frequency and duration at 40 CFR 430.02, to comply with applicable chloroform effluent limitations and standards.

All data submitted by mills as part of the initial compliance demonstration and claimed as confidential business information (CBI) would be maintained pursuant to 40 CFR part 2 when EPA is the permitting authority, and pursuant to regulations governing such information when States are the permitting authorities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 19, 2001 (66 FR 15424–15427). EPA received one comment, which is addressed in the ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this voluntary collection of information is estimated to average six hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Operations that chemically pulp wood fiber using kraft or soda methods to produce bleached papergrade pulp, paperboard, coarse paper, tissue paper, fine paper, and/or paperboard.

Estimated Number of Respondents: 80.

Frequency of Response: not less than annually for direct dischargers and not less than twice annually for indirect dischargers.

Estimated Total Annual Hour Burden: 480 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2015.01 in any correspondence.

Dated: November 20, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–29652 Filed 11–28–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7109–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Facility Ground-water Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Reporting and Recordkeeping Requirements for Facility Ground-water Monitoring Requirements'': OMB Control Number 2050–0033, expiration date November 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 31, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 0959.11 and OMB Control No. 2050–0033, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-Mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0959.11. For technical questions about the ICR contact Sara Rasmussen by phone at 703–308–8399, by facsimile at (703) 308–8609, by mail at the Office of Solid Waste (5303W), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mailcode 5303W, Washington, DC 20460 or e-mail at *rasmussen.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Facility Ground-water Monitoring Requirements, OMB Control Number 2050–0033, EPA ICR Number 0959.11, expiration date November 30, 2001. This is a request for extension of a currently approved collection.

Abstract: This ICR examines the ground-water monitoring standards for permitted and interim status facilities at 40 CFR parts 264 and 165, as specified. The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected (detection monitoring), then confirmed (compliance monitoring), and if necessary, are required to be cleaned up (corrective action). Each of these tiers requires collection and analysis of ground-water samples. Owners or operators that conduct ground-water monitoring are required to report information to the oversight agencies on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to ground-water, and to establish a program whereby any contamination is expeditiously cleaned up as necessary to protect human health and environment. Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are to protect the environment. Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as ''interim status.'' Owners and operators of interim status facilities also must comply with standards set under section 3004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 25, 2001 (66 FR 33579); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average118 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities that operate surface impoundments, waste piles, land treatment units, and landfills which manage hazardous waste regulated under RCRA.

Estimated Number of Respondents: 824.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 96,913.

Estimated Total Annualized Capital, O&M Cost Burden: 16,757,560.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0959.11 and OMB Control No. 2050–0033 in any correspondence.

Dated: November 20, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–29658 Filed 11–28–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7109–6]

Agency Information Collection Activities; Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory; Submission to OMB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory (EPA ICR No. 1741.03; OMB Control No. 2070–0145). The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on February 12, 2001 (66 FR 9842). EPA received no comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before December 31, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1741.03 and OMB Control No. 2070–0145, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: *''farmer.sandy@epamail.epa.gov,''* or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1741.03 and/or OMB Control No. 2070–0145.

SUPPLEMENTARY INFORMATION:

Title: Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory (EPA ICR No. 1741.03; OMB Control No. 2070–0145). This is a request for extension of an existing approved collection that is currently scheduled to expire on December 31, 2001. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: Section 8(b) of the TSCA requires EPA to compile and keep current an Inventory of Chemical Substances in Commerce, which is a listing of chemical substances manufactured, imported, and processed for commercial purposes in the United States. The purpose of the Inventory is to define, for the purpose of TSCA, what chemical substances exist in U.S. commerce. Since the Inventory thereby performs a regulatory function by distinguishing between existing chemicals and new chemicals, which TSCA regulates in different ways, it is imperative that the Inventory be accurate.

However, from time to time, EPA or respondents discover that substances have been incorrectly described by reporting companies. Reported substances have been unintentionally misidentified as a result of simple typographical errors, the misidentification of substances, or the lack of sufficient technical or analytical capabilities to characterize fully the exact chemical substances. EPA has developed guidelines (45 FR 50544, July 29, 1980) under which incorrectly described substances listed in the Inventory can be corrected. The correction mechanism ensures the accuracy of the Inventory without imposing an unreasonable burden on the chemical industry. Without the Inventory correction mechanism, a company that submitted incorrect information would have to file a premanufacture notification (PMN) under TSCA section 5 to place the correct chemical substance on the Inventory whenever the previously reported substance is found to be misidentified. This would impose a much greater burden on both EPA and the submitter than the existing correction mechanism.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 1.0 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and importers of chemical substances, mixtures or categories.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 200.

Estimated Total Annual Burden on Respondents: 200 hours.

Estimated Total Annual Costs: $16,150.

Changes in Burden Estimates: There is no change in the estimated burden associated with this ICR as compared with the ICR most recently approved by OMB.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 19, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–29659 Filed 11–28–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7109–8]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Assessment of EPA Compliance Assistance Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for approval: Assessment of Compliance Assistance Projects, OMB Control Number 2020–0015, expiration date December 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instruction.

DATES: Comments must be submitted on or before December 31, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1860.02 and OMB Control Number 2020–0015, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901 or by e-mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa..gov/icr* and refer to EPA ICR No. 1860.02. For technical questions about the ICR contact Ms. Lynn Vendinello at (202) 564–7066.

SUPPLEMENTARY INFORMATION:

Title: Assessment of EPA Compliance Assistance Projects, OMB Control No. 2020–0015, EPA ICR Number 1860.02, expiration date December 31, 2001.

Abstract: This information collection determines how well EPA compliance assistance tools and services meet customers needs and to assess the effectiveness of the assistance activities. This will be a voluntary collection of information to gauge customer satisfaction with the compliance assistance projects, measure any resulting changes in knowledge and/or behavior, and evaluate any environmental and human health impacts. EPA proposes to use assessment surveys to provide the agency with feedback on the compliance assistance documents, onsite visits, telephone assistance, web sites, and compliance assistance seminars and workshops delivered by headquarters and regional compliance assistance programs to the regulated community. This feedback will help EPA improve the quality and delivery of compliance assistance tools and services. This ICR will only provide anecdotal data for the purpose of informing EPA of the effectiveness of compliance assistance tools, and customer satisfaction with those tools. All assessments undertaken under this ICR will adhere to specific conditions to ensure that data is collected and used properly and efficiently. The information collection is voluntary, and will be limited to non-sensitive data concerning the quality of compliance assistance activities. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 31, 2001 (66 FR 45982); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for profit, Federal Government, or State, Local, and Tribal Government.

Estimated Number of Respondents: 25,676.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 3,956.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1860.02 and OMB Control No. 2020–0015 in any correspondence.

Dated: November 20, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–29660 Filed 11–28–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7109–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category, EPA ICR No. 1878.01. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before December 31, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1878.01 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epa.gov,* or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1878.01. For technical information about the collection contact Mr. Ahmar Siddiqui by telephone at

(202) 260–1826, or by e-mail at *siddiqui.ahmar@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category (EPA ICR No. 1878.01). This is a new collection.

Abstract: The Environmental Protection Agency (EPA) imposed minimum monitoring requirements on bleached papergrade kraft and soda (subpart B) and papergrade sulfite (subpart E) mills under 40 CFR part 430 as part of the effluent limitations guidelines and standards promulgated on April 15, 1998 (63 FR 18504). With approval of this ICR, the permitting and pretreatment control authority must require applicable facilities subject to subparts B or E to monitor their effluent for adsorbable organic halides (AOX), 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), 2,3,7,8-tetrachlorodibenzofuran (TCDF), chloroform, and 12 chlorinated phenolics at specified frequencies. See 40 CFR 430.02. Under 40 CFR 122.41(e)(4), the discharger must then report these monitoring results to the permitting or pretreatment control authority using either Discharge Monitoring Reports (DMRs) or Periodic Compliance Reports (PCRs). These additional minimum monitoring requirements and corresponding additional reporting requirements are necessary to demonstrate compliance with the effluent limitations guidelines and standards promulgated at 40 CFR part 430, subparts B and E. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 19, 2001 (66 FR 15424–15427). EPA received no comments.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 392 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those operations that chemically pulp wood fiber using kraft or soda methods to produce bleached papergrade pulp, paperboard, coarse paper, tissue paper, fine paper, and/or paperboard; and those operations that chemically pulp wood fiber using papergrade sulfite methods to produce pulp and/or paper.

Estimated Number of Respondents: 94.

Frequency of Response: Not less than annually for direct dischargers and not less than twice annually for indirect dischargers.

Estimated Total Annual Hour Burden: 36,858 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $ 19,002,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1878.01 in any correspondence.

Dated: November 11, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–29661 Filed 11–28–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7110–6]

Notice of Opportunity To Provide Additional Information and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity to provide additional information and comment on draft revised Guidelines for Carcinogen Risk Assessment (July 1999), availability of draft revised Guidelines, and adoption of draft revised Guidelines as interim guidance.

SUMMARY: EPA is today announcing its intent to proceed to issue final revised Guidelines for Carcinogen Risk Assessment in 2002. The Agency is soliciting additional scientific information and comments that could assist us in completing the final Guidelines. In 1996, EPA published for public comment proposed revisions to EPA's 1986 Guidelines for Carcinogen Risk Assessment. Since the 1996 proposal, we have benefitted from extensive public comment and scientific peer review, including three reviews by EPA's Science Advisory Board (SAB). EPA scientists are currently addressing these comments under the auspices of the Agency's Science Policy Council. The draft revised Guidelines from which the Agency will proceed to make its final revisions is that provided to the SAB in July 1999 (with minor formatting changes). Even though EPA has received considerable input from the public during the 1996 public comment period and thereafter, we are providing an additional opportunity for the public to provide (1) information or comment on experience gained in applying the 1996 proposed Guidelines or the 1999 draft revised Guidelines and (2) other new information or comment that addresses issues raised during the public comment period and the SAB reviews. The major issues currently being considered by EPA as it proceeds to issue final Guidelines are identified in the Supplementary Information section of this notice. Information and comments already submitted to EPA need not be resubmitted. Until final Guidelines are issued, the July 1999 draft revised Guidelines will serve as EPA's interim guidance to EPA risk assessors preparing cancer risk assessments.

DATES: Information and comments should be received by January 28, 2002.

ADDRESSES: The draft revised Guidelines for Carcinogen Risk Assessment are available via the Internet from *www.epa.gov/ncea/raf/cancer.htm.* Also available here are supplementary materials described within the Supplementary Information section of this notice. A limited number of paper copies of the draft revised Guidelines are available from the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050.

You may submit information and comments in paper form or by e-mail. Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Send paper copies of information and

comments (in duplicate if possible) to the Air Docket at the address listed below. You may also submit information and comments via e-mail to ''*a-and-r-Docket@epa.gov.*'' In your correspondence, refer to Docket ORD–CAN–2001–01. EPA's Air Docket makes materials related to this notice available for review in Public Docket No. ORD–CAN–2001–01 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500 (on the ground floor in Waterside Mall), 401 M Street, SW., Washington, DC 20460 between 8 a.m. and 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548, and by facsimile (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Persons providing information or comments should not submit personal information (such as medical data). If you submit proprietary information for our consideration, you should clearly separate it from non-proprietary information and comments by labeling it Confidential Business Information and send it directly to the contact person listed below under For Further Information instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the public docket. Acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum (mail code 8601D), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–3361, or send electronic mail inquiries to *risk.forum@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1983, the National Academy of Sciences (NAS)/National Research Council (NRC) published its report entitled Risk Assessment in the Federal Government: Managing the Process. In that report, the NRC recommended that Federal regulatory agencies establish ''inference guidelines'' to promote consistency and technical quality in risk assessments and to ensure that the risk assessment process was maintained as a scientific effort separate from risk management. EPA responded to this recommendation by publishing a set of risk assessment guidelines in 1986, including Guidelines for Carcinogen Risk Assessment (51 FR 33992, Sept. 24, 1986). These Guidelines set forth principles and procedures to guide EPA scientists in assessing the cancer risks from chemicals or other agents in the environment and inform the public about these procedures. EPA continues to revise its risk assessment guidelines and to develop new guidelines as experience and scientific understanding evolve. Revisions to the Guidelines for Carcinogen Risk Assessment are intended to make greater use of the increasing scientific understanding of the mechanisms that underlie the carcinogenic process. As part of that process, the Agency published Proposed Guidelines for Carcinogen Risk Assessment in 1996 (61 FR 17960, Apr. 23, 1996).

The draft revisions to the Guidelines have been subject to extensive public comment and scientific peer review, including three reviews by EPA's Science Advisory Board (SAB). The SAB provided its initial comments to the Agency in September 1997. In July 1999, the SAB provided additional comments on major sections of the 1996 proposed Guidelines that had been revised to address prior SAB and public comments. In September 2000, the SAB provided further comments on new discussions focusing on assessing risks to children that are contained in the draft revised Guidelines (July 1999). This review, while supportive of EPA's efforts, did not reach a consensus on several important issues. Such lack of consensus is not uncommon in peer reviews. Since 1996, EPA has also hosted scientific workshops on children's cancer risks and received input from EPA's Children's Health Protection Advisory Committee.

Issues in Completing the Revised Guidelines

EPA has commenced the process to issue final Cancer Guidelines in light of these reviews and activities, as well as public comments received. The July 1999 draft revised Guidelines will be the basis from which the Agency moves forward to issue final Guidelines and are being made available today. EPA is in the process of evaluating peer review and public comments received in order to determine what revisions to the draft revised Guidelines may be appropriate. Additionally, EPA is providing an opportunity for the public to provide (1) information or comment on experience gained in applying the 1996 proposed Guidelines or the July 1999 draft revised Guidelines and (2) other new information or comment that addresses issues raised during the public comment period and in the SAB reviews, particularly the 1999 and 2000 SAB reports. The issues currently being considered by EPA as it proceeds to issue final Guidelines are described in the January 2001 response to the SAB (see Supplementary Materials). Issues include, but are not limited to, the nature and use of default assumptions; definition and application of hazard descriptors; identification of carcinogenic mode(s) of action and, in particular, consideration of relevancy for children (e.g., the potential for differential life stage susceptibility); and guidance on the use of the margin of exposure analysis.

Supplementary Materials

In addition to the July 1999 draft revised Guidelines, supplementary materials are available at the website *www.epa.gov/ncea/raf/cancer.htm* relevant to the development of the current draft revised Guidelines. These materials include the SAB's review letter (September 1997) and EPA's (March 1998) response covering the 1996 proposed Guidelines; the SAB's review letter (July 1999) summarizing the January 1999 review of selected revised sections of the 1996 Guidelines; the SAB's review letter (September 2000) covering EPA's July 1999 revisions to address the protection of children; EPA's January 2001 response to the latter two SAB reviews; a letter (May 1999) from EPA's Children's Health Protection Advisory Committee which presented issues for consideration by the Agency; and a summary of a workshop co-sponsored by EPA on information needs to address children's cancer risk.

Interim Use of 1999 Draft Revised Guidelines

Effective immediately, the July 1999 draft revised Guidelines will serve as EPA's interim guidance to EPA risk assessors preparing cancer risk assessments. As with all previous versions of the cancer risk assessment Guidelines, the predominant guidance provided in the July 1999 draft revised Guidelines is for risk assessors to use the best science and risk assessment techniques available to them at the time a risk assessment is conducted. Thus, while the July 1999 draft revised Guidelines will be available to EPA risk assessors as guidance, any final cancer risk assessment may take a different approach depending on evolving science, the facts of a particular case, or comments from peer reviewers, the public or others.

Dated: November 20, 2001.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 01–29647 Filed 11–28–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

CANCELLATION OF PREVIOUSLY ANNOUNCED MEETINGS:

Tuesday, December 4, 2001, 10 a.m.; meeting closed to the public.

Thursday, December 6, 2001, 10 a.m.; meeting open to the public.

DATE & TIME: Thursday, December 6, 2001 at 10 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: M. Ron Harris, Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–29790 Filed 11–27–01; 2:44 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 66 FR 57967, November 19, 2001.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 28, 2001.

CANCELLATION OF THE MEETING: Notice is hereby given of the cancellation of the Board of Directors meeting scheduled for November 28, 2001.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 01–29713 Filed 11–26–01; 4:15 pm]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Meeting; Notice Announcing an Open Meeting of the Board

TIME AND DATE: 10 A.M., Wednesday, December 5, 2001.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule: Unsecured Credit Limits for the Federal Home Loan Banks
- Waiver of Compliance with the Minimum Liquidity Requirements of § 932.8 and the Unsecured Credit Limits of § 932.9
- Proposed Rule: Amendments to the Affordable Housing Program

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 01–29773 Filed 11–27–01; 2:08 pm]

BILLING CODE 6725–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EST), December 10, 2001.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS; Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 13, 2001, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG LLP audit reports:
   (a) Thrift Savings Plan Billing Process at the Untied States Department of Agriculture, National Finance Center.
   (b) Thrift Savings Plan Annuity Operations at the Metropolitan Life Insurance Company.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 27, 2001.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 01–29822 Filed 11–29–01; 3:53 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Meeting: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 12, 2001, from 8:15 a.m. to 5:15 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will be updated on the approval of biologics license application supplement 103949/5002, PEG–INTRON (peginterferon alfa-2b) powder for injection, Schering Corp., indicated for use alone or in combination with Rebetol (ribavirin, USP), for the treatment of chronic hepatitis C in patients with compensated liver disease who have not been previously treated with interferon alpha and are at least 18 years of age.

Procedure: On December 12, 2001, from 8:15 a.m. to 12:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 5, 2001. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 5, 2001, and submit a brief statement of the general nature of the evidence or arguments

they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 12, 2001, from 1:15 p.m. to 5:15 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the December 12, 2001, Antiviral Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Antiviral Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 21, 2001.

Bonnie H. Malkin,

Acting Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 01–29738 Filed 11–27–01; 11:15 am]

BILLING CODE 4160–01–S

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–929–931 (Final)]

Silicomanganese From India, Kazakhstan, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–929–931 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from India, Kazakhstan, and Venezuela of silicomanganese, provided for in subheading 7202.30.00 of the Harmonized Tariff Schedule of the United States (HTS).[1] [2]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 9, 2001.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of silicomanganese from India, Kazakhstan, and Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on April 6, 2001, by Eramet Marietta, Inc. (Marietta, OH) and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on January 10, 2002, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on January 24, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 17, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese, including silicomanganese briquettes, fines and slag.'' Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Low-carbon silicomanganese excluded from the scope of these investigations is a ferroalloy with the following chemical specifications: minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorus, maximum 0.10 percent carbon and maximum 0.05 percent sulfur.

[2] Some silicomanganese may also be entered under HTS statistical reporting number 7202.99.5040. The merchandise covered by the scope of these investigations includes all silicomanganese (excluding the aforementioned low-carbon silicomanganese), regardless of its tariff classification.

nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 22, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is January 17, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 31, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 31, 2002. On February 21, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 25, 2002, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 26, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–29676 Filed 11–28–01; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–152]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, 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)). This information collection is required to ensure proper accounting of Federal funds and property provided under grants and cooperative agreements with state and local governments.

DATES: All comments should be submitted on or before January 28, 2002.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Grant Programs, Intergovernmental Relations.

OMB Number: 2700–0093.

Type of review: Extension.

Need and Uses: Reporting and recordkeeping are prescribed under 14 CFR part 1274. Information collected ensures the accountability of public funds and proper maintenance of an appropriate internal control system.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 16.

Responses Per Respondent: 6.

Annual Responses: 95.

Hours Per Request: 5 hrs.

Annual Burden Hours: 485.

Frequency of Report: On Occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–29646 Filed 11–28–01; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247, License No. DPR–26]

Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated December 4, 2000, filed by Deborah Katz, Marilyn Elie, Tim Judson, Kyle Rabin, Mark Jacobs, Paul Gunter, and Jim Riccio, hereinafter referred to as the ''Petitioners.'' The Petition was supplemented on January 24, 2001. The Petition concerns the operation of the Indian Point Nuclear Generating Unit No. 2 (IP2).

The Petitioners requested that the Nuclear Regulatory Commission (NRC) take the following enforcement-related actions against Consolidated Edison of New York (ConEd, or the licensee) for IP2: (1) Suspend the license for the IP2 reactor because of the licensee's ''persistent and pervasive, negligent management of the reactor,'' (2) investigate whether the potential misrepresentation of material fact by the utility regarding ''significantly insufficient'' engineering calculations was due to a lack of rigor and thoroughness or was deliberate, (3) revoke the IP2 operating license if it is found that the licensee deliberately provided insufficient and false information, (4) if the license is not revoked, maintain IP2 on the list of ''agency focus'' plants until management demonstrates it can fulfill its regulatory requirements and commitments, (5) not approve the transfer of the IP2 license until management can demonstrate that the Updated Final Safety Analysis Report (UFSAR), the condition report backlog, and the maintenance requirements are up to date and workers have been retrained, and (6) not allow the IP2 reactor to restart until the fundamental breakdown in management is analyzed and corrected. The Petitioner also requested that a public meeting be held to discuss this matter.

As the basis for the December 4, 2000, request, the Petitioners stated that the licensee's systemic mismanagement of

the plant resulted in, among other things, inconsistencies and inaccuracies in the UFSAR, safety systems whose compliance with the regulations could not be verified, design basis analyses that might not be accurate, and a UFSAR that may not be up to date. The Petitioners considers the systemic mismanagement to be potentially unsafe and to be in violation of Federal regulations. In the Petition, a number of NRC inspection reports, licensee event reports, letters between the NRC staff and the licensee, plant performance review summaries, and other documents were cited that the Petitioners believe document their contentions.

On January 24, 2001, the Petitioners and the licensee met with the staff's Petition Review Board. The meeting gave the Petitioners and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition. During the public meeting, the Petitioners gave the staff supplemental information which the staff considered in making its decision. The Petitioners contended that the supplemental information provided further evidence of the licensee's mismanagement of the IP2 facility.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on July 25, 2001. The Petitioners responded with comments on September 14, 2001. The licensee did not respond. The Petitioners' comments and the NRC staff responses to the comments can be found in the cover letter transmitting the Director's Decision and Attachment 1 to the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation concluded that the information contained in the Petition and the supplement does not warrant NRC staff action to suspend or revoke the operating license for IP2. Likewise, the staff finds no basis for initiating an investigation into wrongdoing on the part of ConEd. These requested actions are not granted. The NRC grants the Petitioners' request that IP2 remain on the list of agency focus plants (i.e., plants with multiple/repetitive degraded cornerstones). However, the NRC staff did not grant the Petitioners' request to define under what conditions IP2 will be removed from the list of plants with multiple/repetitive degraded cornerstones.

In addition, the staff found that the Petitioners' request to delay or deny a request to transfer the operating license for IP2 until the licensee's management can demonstrate that the UFSAR, condition report backlog, and maintenance requirements are up to date, and that plant workers have been retrained to the modified UFSAR does not meet the requirements for review under 10 CFR 2.206. The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–01–04), the complete text of which is available in ADAMS for inspection in the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically accessible in ADAMS through the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html* (ADAMS Accession No. ML 0103030073). Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or locally at 301–415–4737, or by email at *pdr@nrc.gov.*

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of November 2001.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulations.

[FR Doc. 01–29622 Filed 11–28–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13961]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Spinnaker Industries, Inc., Common Stock, No Par Value and Class A Common Stock, No Par Value)

November 23, 2001.

Spinnaker Industries, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) hereunder,[2] to withdraw its Common Stock, no par value, and Class A Common Stock, no par value (''Securities''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On November 9, 2001, the Board of Directors of the Issuer unanimously approved a resolution to withdraw the Securities from listing on the Amex. In making the decision to withdraw the Security from listing on the Exchange, the Issuer considered the following:

1. The Issuer's conclusion that it will be unable to achieve compliance with the Amex's continued listing requirements in the foreseeable future;

2. The Issuer's decision, after extensive negotiations with the holders of the Issuer's 10¾% Senior Secured Notes (due 2006) and its senior secured lenders, file a voluntary petition from relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court of the Southern District of Ohio, Western Division, in Dayton. The petition is being filed on November 13, 2001;

3. The percentage of the Securities owned by the principal shareholder of the Issuer and the four holders (including the principal shareholder) owning 5% or more of the outstanding Securities as of November 1, 2001 (41.7% and 78.3%, respectively), and the very limited trading activity in the Security; and

4. The costs associated with maintaining the Issuer's listing on the Amex in light of the Issuer's current financial position.

Additionally, the Issuer represents that it has fewer than 300 record holders and it intends to file a Form 15 with the Commission in accordance with Rule 12g–4 under the Act.

The Issuer's application relates solely to the Securities' withdrawal from listing and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

An interested person may, on or before December 18, 2001 to submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–29638 Filed 11–28–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 3, 2001: a closed meeting will be held on Monday, December 3, 2001, at 2 p.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5),(7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Monday, December 3, 2001, will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; formal orders; and an adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matter have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

[5] 17 CFR 200.30–3(a)(1).

Dated: November 27, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–29823 Filed 11–27–01; 4:02 p.m.]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Extension of Deadline for the Submission of Responses to Requests for the Exclusion of Specific Products From Any Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel and Modifications to the Earlier Instructions for the Submission of Written Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of deadline for submission of responses and modifications to the earlier instructions for the submission of written comments.

SUMMARY: The Trade Policy Staff Committee (''TPSC'') is extending the deadline, from November 27, 2001, to December 5, 2001, for the submission of responses to requests for the exclusion of specific products from any action under section 203 of the Trade Act of 1974, as amended, (19 U.S.C. 2253) (''Trade Act'') with regard to imports of certain steel. In light of recent security measures, the TPSC is also modifying the instructions for the submission of written comments in the TPSC Notice and Request for Comments of October 26, 2001. See 66 FR 54321 (''October 26th Notice'').

DATES: The deadline for responses to requests for the exclusion of specific products from any action under section 203 of the Trade Act of 1974 with regard to imports of certain steel is being extended to December 5, 2001. Other dates in the October 26th Notice remain unchanged. Modifications to the instructions for submission of written comments are applicable to all documents related to action under section 203 of the Trade Act with regard to imports of certain steel that are submitted to the TPSC after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On October 26, 2001, the TPSC published in the **Federal Register** a Notice and Request for Comments on what action the President should take under section 203 of the Trade Act to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic and social benefits than costs. See 66 FR 54321. According to the October 26th Notice, the deadline for the submission of requests for the exclusion of specific products from any action under section 203(a) of the Trade Act was November 13, 2001, and the deadline for the submission of responses to such requests was November 27, 2001. The TPSC is extending the November 27, 2001, deadline until not later than December 5, 2001. Parties should refer to the October 26th Notice, and additional information provided below, for instructions for the submission of written comments.

The October 26th Notice contained instructions for the submission of written comments. In light of recently implemented security measures, U.S. mail submissions will not be received in time for consideration. To improve the receipt of submissions by electronic mail, the TPSC is making the following modifications to the instructions:

- The October 26th Notice allowed interested persons filing written comments, requests, or other information to provide the information by electronic mail or by U.S. mail. It instructed interested persons submitting documents by U.S. mail to include twenty (20) copies. The TPSC now requests only one (1) copy of any documents submitted by U.S. mail. Interested persons submitting documents by U.S. mail should also make arrangements for the transmission of an electronic copy of the document by electronic mail in accordance with the instructions in the October 26th Notice, as modified below. Although the TPSC prefers the use of electronic mail, a copy of any documents submitted by U.S. mail may also be transmitted to the TPSC by fax at (202) 395–9674.
- The October 26th Notice indicated that interested persons may file documents in any commercial word processing or spreadsheet format. The TPSC strongly encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail message.
- The October 26th Notice instructed that for any document containing business confidential information submitted by electronic transmission, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with

the characters ''P–''. The TPSC further requests that the characters ''P–'' or ''BC-'' be followed by the name of the submitter. If a submission represents the views of multiple persons, only one needs to be listed in the file name. If the same person or persons has submitted multiple documents, each should be sequentially numbered, with the number following the name of the submitter in the file name. (E.g., the sixth public submission by Smith and Jones would be labeled ''P-Smith-6''.)

• Interested persons who make submissions by electronic mail should not provide separate cover letters. Any information that might appear in a cover letter should be included in the submission itself, or in the electronic mail message used to transmit the submission. To the extent possible, any attachments to the submission should be aggregated into a single file with the submission itself, and not transmitted separately.

These modifications are applicable to all documents related to action under section 203 of the Trade Act with regard to imports of certain steel that are submitted to the TPSC after publication of this notice in the **Federal Register**.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–29776 Filed 11–27–01; 3:07 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; correction.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the December 5, 2001, meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues related to repair station ratings and quality assurance programs has been rescheduled and the meeting location has been changed.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

Correction

In the **Federal Register** of November 20, 2001, in FR Doc. 01–28930, on page 58187 the third column, correct the **DATES** caption to read:

DATES: The meeting will be held on December 11, 2001, from 9:30 a.m. to 5:30 p.m.

On page 58187, in the third column correct the **ADDRESSES** caption to read:

ADDRESSES: The meeting will be held at the National Air Carrier Association, 910 Seventeenth Street, NW., Suite 1100, Washington, DC, 20006.

Dated: November 21, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–29636 Filed 11–28–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its proposed information collection titled, ''OCC Communications Questionnaire.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by December 31, 2001.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–OCCPRODUCTS, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Alexander T. Hunt, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division. Questions regarding content of the questionnaire should be directed to Thomas Baucom, Communications Division, (202) 874–5513.

SUPPLEMENTARY INFORMATION: The OCC is requesting OMB approval of the following information collection:

Title: OCC Communications Questionnaire.

OMB Number: 1557—to be determined.

Description: The OCC is proposing to collect information from national banks regarding the quality, timeliness, and effectiveness of OCC communications products, such as booklets, issuances, CDs, and Web site. Completed questionnaires will provide the OCC with information needed to properly evaluate the effectiveness of its paper and electronic communications products. The OCC will use the information to identify problems and to improve its service to national banks.

Type of Review: New collection.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 2,300.

Estimated Total Annual Responses: 2,300.

Frequency of Response: One time.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden: 1,150 burden hours.

Dated: November 21, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 01–29635 Filed 11–28–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC); Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Open Meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC on Thursday, December 6, 2001. The meeting will be held in the Melrose Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Thursday, December 6, 2001

9:00 Meeting Opens
1:00 Meeting Ajourns

The topics that are planned to be covered are as follows:
(1) Modernization Update
(2) Preview of 2002 Filing Season
(3) Business e-file Plans
(4) ETAAC Future Direction

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 80 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, *notification of intent to attend the meeting should be made with Ms. Robin Marusin by November 30, 2001. Ms. Marusin can be reached at 202–622–8184.* Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Thursday November 29 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC, call Robin Marusin at 202–622–8184.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 01–29645 Filed 11–28–01; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 66, No. 230

Thursday, November 29, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Reduction of Charges for Certain Cotton Textile Products Produced or Manufactured in the Republic of Turkey

November 16, 2001.

Correction

In notice document 01–29109 appearing on page 58123 in the issue of Tuesday, November 20, 2001, make the following corrections:

(1) On page 58123, beginning in the first column, the last paragraph, the **Authority** citation, should have appeared as follows;

"**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."

(2) On the same page, in the third column, the first paragraph should have appeared as follows;

"The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1)."

[FR Doc. C1–29109 Filed 11–28–01; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 92

Control of Air Pollution From Locomotives and Locomotive Engines; Republication

CFR Correction

Editorial Note: On Monday, November 26, 2001, this rule document FR Doc. 01-55530 appeared on 66 FR 58953–58964. Due to additional text being inadvertently added, it is being reprinted in its entirety.

In Title 40 of the Code of Federal Regulations, Parts 87 to 99, revised as of July 1, 2001, part 92 is corrected in § 92.120 by revising equations (1) and (2) in paragraph (c)(2)(v), in § 92.121 by revising paragraphs (b)(2)(vi), (b)(2)(ix), (b)(2)(xi)(A), and (b)(4)(iv), and by revising § 92.132 to read as follows:

§ 92.120 NDIR analyzer calibration and checks.

* * * * *

(c)* * *

(2)* * *

(v)* * *

$$y = Ax^4 + Bx^3 + Cx^2 + Dx + E \quad (1)$$

$$y = x/(Ax^4 + Bx^3 + Cx^2 + Dx + E) \quad (2)$$

where:

y = concentration.

x = chart deflection.

* * * * *

§ 92.121 Oxides of nitrogen analyzer calibration and check.

* * * * *

(b)* * *

(2)* * *

(vi) Turn on the NO_X generator O_2 (or air) supply and adjust the O_2 (or air) flow rate so that the NO indicated by the analyzer is about 10 percent less than indicated in step in paragraph (b)(2)(v) of this section. Record the concentration of NO in this NO + O_2 mixture.

* * * * *

(ix) Switch off the NO_X generation, but maintain gas flow through the system. The oxides of nitrogen analyzer will indicate the total NO_X in the NO + O_2 mixture. Record this value.

* * * * *

(xi)* * *

(A) Percent Efficiency=(1 + (a − b)/(c − d))(100)

where:

a=concentration obtained in paragraph (b)(2)(viii) of this section.

b=concentration obtained in paragraph (b)(2)(ix) of this section.

c=concentration obtained in paragraph (b)(2)(vi) of this section.

d=concentration obtained in paragraph (b)(2)(vii) of this section.

* * * * *

(4)* * *

(iv) Calculate the concentration of the converter checking gas using the results from step in paragraph (b)(4)(iii) of this section and the converter efficiency from paragraph (b)(2) of this section as follows:

Concentration=(((X–Y)(100))/Efficiency) + Y

* * * * *

§ 92.132 Calculations.

(a) *Duty-cycle emissions.* This section describes the calculation of duty-cycle emissions, in terms of grams per brake horsepower hour (g/bhp-hr). The calculation involves the weighted summing of the product of the throttle notch mass emission rates and dividing by the weighted sum of the brake horsepower. The final reported duty-cycle emission test results are calculated as follows:

(1)(i) $E_{idc}=(\Sigma(M_{ij})(F_j))/(\Sigma(BHP_j)(F_j))$

Where:

E_{idc}=Duty-cycle weighted, brake-specific mass emission rate of pollutant i (i.e., HC, CO, NO_X or PM and, if appropriate, THCE or NMHC) in grams per brake horsepower-hour;

M_{ij}=the mass emission rate pollutant i for mode j;

F_j=the applicable weighting factor listed in Table B132–1 for mode j;

BHP_j=the measured brake horsepower for mode j.

(ii) Table B132–1 follows:

TABLE B132–1—WEIGHTING FACTORS FOR CALCULATING EMISSION RATES

Throttle notch setting	Test mode	Locomotive not equipped with multiple idle notches		Locomotive equipped with multiple idle notches	
		Line-haul	Switch	Line-haul	Switch
Low Idle	1a	NA	NA	0.190	0.299

TABLE B132–1—WEIGHTING FACTORS FOR CALCULATING EMISSION RATES—Continued

Throttle notch setting	Test mode	Locomotive not equipped with multiple idle notches		Locomotive equipped with multiple idle notches	
		Line-haul	Switch	Line-haul	Switch
Normal Idle	1	0.380	0.598	0.190	0.299
Dynamic Brake	2	0.125	0.000	0.125	0.000
Notch 1	3	0.065	0.124	0.065	0.124
Notch 2	4	0.065	0.123	0.065	0.123
Notch 3	5	0.052	0.058	0.052	0.058
Notch 4	6	0.044	0.036	0.044	0.036
Notch 5	7	0.038	0.036	0.038	0.036
Notch 6	8	0.039	0.015	0.039	0.015
Notch 7	9	0.030	0.002	0.030	0.002
Notch 8	10	0.162	0.008	0.162	0.008

(2) Example: For the line-haul cycle, for locomotives equipped with normal and low idle, and with dynamic brake, the brake-specific emission rate for HC would be calculated as:

$E_{HCdc}=[(M_{HCla})\ (0.190) + (M_{HC1})\ (0.190) + (M_{HC2})\ (0.125) + (M_{HC3})\ (0.065) + (M_{HC4})\ (0.065) + (M_{HC5})\ (0.052) + (M_{HC6})\ (0.044) + (M_{HC7})\ (0.038) + (M_{HC8})\ (0.039) + (M_{HC9})\ (0.030) + (M_{HC10})\ (0.162)]/[(BHP_{1a})\ (0.190) + (BHP_1)\ (0.190) + (BHP_2)\ (0.125) + (BHP_3)\ (0.065) + (BHP_4)\ (0.065) + (BHP_5)\ (0.052) + (BHP_6)\ (0.044) + (BHP_7)\ (0.038) + (BHP_8)\ (0.039) + (BHP_9)\ (0.030) + (BHP_{10})\ (0.162)]$

(3) In each mode, brake horsepower output is the power that the engine delivers as output (normally at the flywheel), as defined in § 92.2.

(i) For locomotive testing (or engine testing using a locomotive alternator/generator instead of a dynamometer), brake horsepower is calculated as:

$BHP=HP_{out}/A_{eff} + HP_{acc}$

Where:

HP_{out}=Measured horsepower output of the alternator/generator.

A_{eff}=Efficiency of the alternator/generator.

HP_{acc}=Accessory horsepower.

(ii) For engine dynamometer testing, brake horsepower is determined from the engine speed and torque.

(4) For locomotive equipped with features that shut the engine off after prolonged periods of idle, the measured mass emission rate M_{i1} (and M_{i1a} as applicable) shall be multiplied by a factor equal to one minus the estimated fraction reduction in idling time that will result in use from the shutdown feature. Application of this adjustment is subject to the Administrator's approval.

(b) *Throttle notch emissions.* This paragraph (b) describes the calculation of throttle notch emissions for all operating modes, including: idle (normal and low, as applicable); dynamic brake; and traction power points. The throttle notch (operating mode) emission test results, final reported values and values used in paragraph (a)(1) of this section are calculated as follows:

(1) Brake specific emissions (E_{ij}) in grams per brake horsepower-hour of each species i (i.e., HC, CO, NO_X or PM and, if appropriate, THCE or NMHC) for each mode j:

(i) $E_{HC\ mode}$=HC grams/BHP-hr=$M_{HC\ mode}$/Measured BHP in mode.

Where:

$M_{HC\ mode}$=Mass HC emissions (grams per hour) for each test mode.

(ii) $E_{THCE\ mode}$=THCE grams/BHP-hr=$M_{THCE\ mode}$/Measured BHP in mode.

Where:

$M_{THCE\ mode}$ (Total hydrocarbon equivalent mass emissions (grams per hour) for each test mode):

$=M_{HCj} + \Sigma\ (M_{ij})\ (MWC_p)/MWC_i$

M_{ij}=the mass emission rate oxygenated pollutant i for mode j.

MWC_i=the molecular weight of pollutant i divided by the number of carbon atoms per molecule of pollutant i.

MWC_p=the molecular weight of a typical petroleum fuel component divided by the number of carbon atoms per molecule of a typical petroleum fuel component=13.8756.

(iii) $E_{NMHC\ mode}$=NMHC grams/BHP-hr=$M_{NMHC\ mode}$/Measured BHP in mode.

Where:

$M_{NMHC\ mode}$=Mass NMHC emissions (grams per hour) for each test mode.

(iv) $E_{CO\ mode}$=CO grams/BHP-hr=$M_{CO\ mode}$/Measured BHP in mode.

Where:

$M_{CO\ mode}$=Mass CO emissions (grams per hour) for each test mode.

(v) $E_{NOx\ mode}$=NO_X grams/BHP–hr=$M_{NOx\ mode}$/Measured BHP in mode.

Where:

$M_{NOx\ mode}$=Mass NO_X emissions (grams per hour) for each test mode.

(vi) $E_{PM\ mode}$=PM grams/BHP–hr=$M_{PM\ mode}$/Measured BHP in mode.

Where:

$M_{PM\ mode}$=Mass PM emissions (grams per hour) for each test mode.

(vii) $E_{AL\ mode}$=Aldehydes grams/BHP–hr=$M_{AL\ mode}$/Measured BHP in mode.

(vii) $E_{AL\ mode}$=Aldehydes grams/BHP–hr=$M_{AL\ mode}$/Measured BHP in mode.

Where:

$M_{AL\ mode}$=Total aldehyde mass emissions (grams per hour) for each test mode.

(2) Mass Emissions—Raw exhaust measurements. For raw exhaust measurements mass emissions (grams per hour) of each species for each mode:

(i) General equations. (A) The mass emission rate, $M_{X\ mode}$ (g/hr), of each pollutant (HC, NO_X, CO_2, CO, CH_4 CH_3OH, CH_3CH_2OH, CH_2O, CH_3CH_2O) for each operating mode for raw measurements is determined based on one of the following equations:

$M_{X\ mode}=(DX/10^6)(DVol)(MW_X/V_m)$

$M_{X\ mode}=(WX/10^6)(WVol)(MW_X/V_m)$

Where:

X designates the pollutant (e.g., HC), DX is the concentration of pollutant X (ppm or ppmC) on a dry basis, MW_X is the molecular weight of the pollutant (g/mol), DVol is the total exhaust flow rate (ft^3/hr) on a dry basis, WX is the concentration of pollutant X (ppm or ppmC) on a wet basis, WVol is the total exhaust flow rate (ft^3/hr) on a wet basis, V_m is the volume of one mole of gas at standard temperature and pressure (ft^3/mol).

(B) All measured volumes and volumetric flow rates must be corrected to standard temperature and pressure prior to calculations.

(ii) The following abbreviations and equations apply to this paragraph (b)(2):

α=Atomic hydrogen/carbon ratio of the fuel.

β=Atomic oxygen/carbon ratio of the fuel.

CMW_f=Molecular weight of the fuel per carbon atom, or carbon molecular weight (g/moleC)=$(12.011 + 1.008\alpha + 16.000\beta)$.

DCO=CO concentration in exhaust, ppm (dry).

DCO_2=CO_2 concentration in exhaust, percent (dry).

DHC=HC carbon concentration in exhaust, ppm C (dry).

$DNOX=NO_X$ concentration in exhaust, in ppm (dry).
DVol=Total exhaust flow rate (ft^3/hr) on a dry basis; or $=(V_m)(W_f)/((CMW_f)(DHC/10^6 + DCO/10^6 + DCO2/100))$.
K=Water gas equilibrium constant=3.5.
K_w=Wet to dry correction factor.
M_F=Mass flow-rate of fuel used in the engine in lb/hr=W_f/453.59.
MW_C=Atomic weight of carbon=12.011.
MW_{CO}=Molecular weight of CO=28.011.
MW_H=Atomic weight of hydrogen=1.008.
MW_{NO2}=Molecular weight of nitrogen dioxide (NO_2)=46.008.
MW_O=Molecular weight of atomic oxygen=16.000.
T=Temperature of inlet air (°F).
V_m=Volume of one mole of gas at standard temperature and pressure (ft^3/mole).
W_f=Mass flow-rate of fuel used in the engine, in grams/hr=(453.59)×(M_f lbs/hr).
$WCO_2=CO_2$ concentration in exhaust, percent (wet).
WHC=HC concentration in exhaust, ppm C (wet).
WVol=Total exhaust flow rate (ft^3/hr) on a wet basis; or $=(V_m)(W_f)/((CMW_f)(WHC/10^6 + WCO/10^6\ WCO2/100))$.

(iii) Calculation of individual pollutant masses. Calculations for mass emission are shown here in multiple forms. One set of equations is used when sample is analyzed dry (equations where the concentrations are expressed as DX), and the other set is used when the sample is analyzed wet (equations where the concentrations are expressed as WX). When samples are analyzed for some constituents dry and for some constituents wet, the wet concentrations must be converted to dry concentrations, and the equations for dry concentrations used. Also, the equations for HC, NMHC, CO, and NO_X have multiple forms that are algebraically equivalent: An explicit form that requires intermediate calculation of V_m and DVol or WVol; and an implicit form that uses only the concentrations (e.g., DCO) and the mass flow rate of the fuel. For these calculations, either form may be used.

(A) Hydrocarbons and nonmethane hydrocarbons.

(*1*) Hydrocarbons. (*i*) *For petroleum-fueled engines:*

$$M_{HC\ mode} =(DHC)CMW_f(DVol)(10^6)/V_m =((DHC/10^6)(W_f)/((DCO/10^6) + (DCO_2/100) + (DHC/10^6) + (\Sigma DX/10^6)))$$

$$M_{HC\ mode} =(WHC)CMW_f(WVol)(10^6)/V_m =((WHC/10^6)(W_f)/((WCO/10^6) + (WCO_2/100) + (WHC/10^6) + (\Sigma(WX/10^6)))$$

(*ii*) *For alcohol-fueled engines:*

$$DHC=FID\ HC - \Sigma(r_x)(DX)$$

$$WHC=FID\ HC - \Sigma(r_x)(WX)$$

Where:

FID HC=Concentration of ''hydrocarbon'' plus other organics such as methanol in exhaust as measured by the FID, ppm carbon equivalent.
r_x=FID response to oxygenated species×(methanol, ethanol, or acetaldehyde).
DX=Concentration of oxygenated species×(methanol, ethanol, or acetaldehyde) in exhaust as determined from the dry exhaust sample, ppm carbon (e.g., DCH3OH, 2(DCH3CH2OH)).
WX=Concentration of oxygenated species×(methanol, ethanol, or acetaldehyde) in exhaust as determined from the wet exhaust sample, ppm carbon.
ΣDX=The sum of concentrations DX for all oxygenated species.
ΣWX=The sum of concentrations WX for all oxygenated species.

(*2*) Nonmethane hydrocarbons:

$$M_{NMHC\ mode}=(DNMHC)CMW_f(DVol)(10^6)/V_m =((DNMHC/10^6)(W_f)/((DCO/10^6) + (DCO_2/100) + (DHC/10^6)))$$

$$M_{NMHC\ mode}=(WNMHC)CMW_f(WVol)(10^6)/V_m =((WNMHC/10^6)(W_f)/((WCO/10^6) + (WCO_2/100) + (WHC/10^6)))$$

Where:

$DNMHC=FID\ HC - (r_{CH4})(DCH4)$
$WNMHC=FID\ HC - (r_{CH4})(WCH4)$
FID HC=Concentration of ''hydrocarbon'' plus other organics such as methane in exhaust as measured by the FID, ppm carbon equivalent.
r_{CH4}=FID response to methane.
DCH4=Concentration of methane in exhaust as determined from the dry exhaust sample, ppm.
WCH4=Concentration of methane in exhaust as determined from the wet exhaust sample, ppm.

(B) Carbon monoxide:

$$M_{CO\ mode}=(DCO)MW_{CO}(DVol)/10^6/V_m =((MW_{CO}(DCO/10^6)(W_f)/((CMW_f)(DCO/10^6) + (DCO_2/100) + DHC/10^6) + (\Sigma DX/10^6)))$$

$$M_{CO\ mode}=(WCO)MW_{CO}(DVol)(10^6)/V_m + ((MW_{CO}(WCO/10^6)(W_f)/((CMW_f)(WCO/10^6) + (WCO_2/100) + WHC/10^6) + (\Sigma WX/10^6)))$$

(C) Oxides of nitrogen:

$$M_{NOx\ mode}=(DNOX)MW_{NO2}(DVol)(10^6)/V_m =((MW_{NO2}(DNOX/10^6)(W_f)/((CMW_f)(DCO/10^6) + (DCO_2/100) + (DHC/10^6) + (\Sigma DX/10^6)))$$

$$M_{NOx\ mode}=(WNOX)MW_{NO2}(DVol)(10^6)/V_m =((MW_{NO2}(WNOX/10^6)(W_f)/((CMW_f)(WCO/10^6) + (WCO_2/100) + (WHC/10^6) + (\Sigma WX/10^6)))$$

(D) Methanol:

$$M_{CH3OH\ mode}=(DCH3OH/10^6)32.042(DVol)/V_m$$

$$M_{CH3OH\ mode}=(WCH3OH/10^6)32.042(WVol)/V_m$$

Where:

$DCH3OH=(V_m)(10^6)[(C_1\times AV_1) + (C_2\times AV_2)]/DVol_{MS.}$
$WCH3OH=(V_m)(10^6)[(C_1\times AV_1) + (C_2\times AV_2)]/WVol_{MS.}$
C_i=concentration of methanol in impinger i (1 or 2) in mol/ml.
AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.
$DVol_{MS}$=Volume (standard ft^3) of exhaust sample drawn through methanol impingers (dry).
$WVol_{MS}$=Volume (standard ft^3) of exhaust sample drawn through methanol impingers (wet).

(E) Ethanol:

$$M_{CH3CH2OH\ mode}=(DCH3CH2OH/10^6)23.035(DVol)/V_m$$

$$M_{CH3CH2OH\ mode} = (WCH3CH2OH/10^6)23.035(WVol)/V_m$$

Where:

$DCH3CH2OH=(V_m)(10^6)[(C_1\times AV_1) + (C_2\times AV_2)]/DVol_{ES.}$
$WCH3CH2OH=(V_m)(10^6)\ [(C_1\times AV_1) + (C_2\times AV_2)]/WVol_{ES.}$
C_i=concentration of ethanol in impinger i (1 or 2) in mol/ml.
AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.
$DVol_{ES}$=Volume (standard ft^3) of exhaust sample drawn through ethanol impingers (dry).
$WVol_{ES}$=Volume (standard ft^3) of exhaust sample drawn through ethanol impingers (wet).

(F) Formaldehyde:

$$M_{CH2O\ mode}=(DCH2O/10^6)30.026(DVol)/V_m$$

$$M_{CH2O\ mode}=(WCH2O/10^6)30.026(WVol)/V_m$$

(*1*) If aldehydes are measured using impingers:

$$DCH2O=(V_m)(10^6)[(C_1\times AV_1) + (C_2\times AV_2)]/DVol_{FS}$$

$$WCH2O=(V_m)(10^6)[(C_1\times AV_1) + (C_2\times AV_2)]/WVol_{FS}$$

(*2*) If aldehydes are measured using cartridges:

$$DCH2O=(V_m)(10^6)(C_R\times AV_R)/DVol_{FS}$$

$$WCH2O=(V_m)(10^6)(C_R\times AV_R)/WVol_{FS}$$

(*3*) The following definitions apply to this paragraph (b)(2)(iii)(F):

AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.
AV_R=Volume of absorbing reagent use to rinse the cartridge in ml.
C_i=concentration of formaldehyde in impinger i (1 or 2) in mol/ml.
C_R=concentration of formaldehyde in solvent rinse in mol/ml.
$DVol_{FS}$=Volume (standard ft^3) of exhaust sample drawn through formaldehyde sampling system (dry).
$WVol_{FS}$=Volume (standard ft^3) of exhaust sample drawn through formaldehyde sampling system (wet).

(G) Acetaldehyde:

$$M_{CH3CHO\ mode}=(DCH3CHO/10^6)27.027(DVol)/V_m$$

$M_{CH3CHO\ mode}=(WCH3CHO/10^6)27.027(WVol)/V_m$

(*1*) If aldehydes are measured using impingers:

$DCH3CHO=(V_m)(10^6)[(C_1 \times AV_1) + (C_2 \times AV_2)]/DVol_{AS}$

$WCH3CHO=(V_m)(10^6)[(C_1 \times AV_1) + C_2 \times AV_2)]/WVol_{AS}$

(*2*) If aldehydes are measured using cartridges:

$DCH3CHO=(V_m)(10^6)(C_R \times AV_R)/DVol_{AS}$

$WCH3CHO=(V_m)(10^6)(C_R \times AV_R)/WVol_{AS}$

(*3*) The following definitions apply to this paragraph (b)(2)(iii)(G):

AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.

AV_R=Volume of absorbing reagent use to rinse the cartridge in ml.

C_i=concentration of acetaldehyde in impinger i (1 or 2) in mol/ml.

C_R=concentration of acetaldehyde in solvent rinse in mol/ml.

$DVol_{AS}$=Volume (standard ft^3) of exhaust sample drawn through acetaldehyde sampling system (dry).

$WVol_{AS}$=Volume (standard ft^3) of exhaust sample drawn through acetaldehyde sampling system (wet).

(iv) Conversion of wet concentrations to dry concentrations. Wet concentrations are converted to dry concentrations using the following equation:

$DX=K_W\ WX$

Where:

WX is the concentration of species X on a wet basis.

DX is the concentration of species X on a dry basis.

K_W is a conversion factor=WVol/DVol=1 + DH2O.

(A) Iterative calculation of conversion factor. The conversion factor K_W is calculated from the fractional volume of water in the exhaust on a dry basis (DH2O=volume of water in exhaust/dry volume of exhaust). Precise calculation of the conversion factor K_W must be done by iteration, since it requires the dry concentration of HC, but HC emissions are measured wet.

(*1*) The conversion factor is calculated by first assuming DHC=WHC to calculate DVol:

$DVol=(V_m)(W_f)/((CMW_f)(DHC/10^6 + DCO/10^6 + DCO2/100))$

(*2*) This estimate is then used in the following equations to calculate $DVol_{air}$, then DH2O, then K_W, which allows DHC to be determined more accurately from WHC:

$$DH2O = \left[\frac{\alpha\left(\frac{DCO2}{10^2}+\frac{DCO}{10^6}\right)}{2}+\frac{(Y)(DVol_{air})}{DVol}\right]\left[\frac{1}{1+\frac{DCO}{(DCO2)(K)(10^4)}}\right]$$

Where:

Y=Water volume concentration in intake air, volume fraction (dry).

$DVol_{air}$=Air intake flow rate (ft^3/hr) on a dry basis, measured, or calculated as:

$$DVol_{air} = DVol\left[1-\left(\frac{DCO2}{10^2}\right)\left(\frac{\alpha}{4}\right)-\frac{DCO}{10^6}\left(\frac{\alpha}{4}+0.5\right)\right]$$

(*3*) The calculations are repeated using this estimate of DHC. If the new estimate for K_W is not within one percent of the previous estimate, the iteration is repeated until the difference in K_W between iterations is less than one percent.

(B) Alternate calculation of DH2O (approximation). The following approximation may be used for DH2O instead of the calculation in paragraph (b)(2)(iv)(A) of this section:

$$DH2O = \left[\frac{\alpha\left(\frac{DCO2}{10^2}+\frac{DCO}{10^6}\right)}{2}+(Y)(DVol_{Ratio})\right]\left[\frac{1}{1+\frac{DCO}{(DCO2)(K)(10^4)}}\right]$$

Where:

$$DVol_{ratio} = \frac{DVol_{air}}{DVol} = \left[1-\left(\frac{DCO2}{10^2}\right)\left(\frac{\alpha}{4}\right)-\frac{DCO}{10^6}\left(\frac{\alpha}{4}+0.5\right)\right]$$

Y=Water volume concentration in intake air, volume fraction (dry).

(3) *Mass Emissions—Dilute exhaust measurements.* For dilute exhaust measurements mass emissions (grams per hour) of each species for each mode:

(i) *General equations.* The mass emission rate, $M_{x\ mode}$ (g/hr) of each pollutant (HC, NO_X, CO2, CO, CH4 CH3OH, CH3CH2OH, CH2O, CH3CH2O) for each operating mode for bag measurements and diesel continuously heated sampling system measurements is determined from the following equation:

$M_{x\ mode}=(V_{mix})(Density_x)(X_{conc})/(V_f)$

Where:

x designates the pollutant (e.g., HC), V_{mix} is the total diluted exhaust volumetric flow rate (ft^3/hr), $Density_x$ is the specified density of the pollutant in the gas phase (g/ft^3), X_{conc} is the fractional concentration of pollutant x (i.e., ppm/10^6, ppmC/10^6, or %/100), and V_f is the fraction of the raw exhaust that is diluted for analysis.

(ii) The following abbreviations and equations apply to paragraphs (b)(3)(i) through (b)(3)(iii)(J) of this section:

(A) DF=Dilution factor, which is the volumetric ratio of the dilution air to the raw exhaust sample for total dilution, calculated as:

$$DF = \frac{WCO2 - WCO2_d}{WCO2_e - WCO2_d} - 1$$

Where:

WCO2=Carbon dioxide concentration of the raw exhaust sample, in percent (wet).

$WCO2_e$=Carbon dioxide concentration of the dilute exhaust sample, in percent (wet).

$WCO2_d$=Carbon dioxide concentration of the dilution air, in percent (wet).

(B) V_{mix}=Diluted exhaust volumetric flow rate in cubic feet per hour corrected to standard conditions (528°R, and 760 mm Hg).

(C) V_f=Fraction of the total raw exhaust that is diluted for analysis.

$=((CO2_{conc}/10^2) + (CO_{conc}/10^6) + (HC_{conc}/10^6))(V_{mix})(CMW_f)/V_m/M_f$

(iii) Calculation of individual pollutants.

(A) $M_{HC\ mode}$=Hydrocarbon emissions, in grams per hour by mode, are calculated using the following equations:

$M_{HC\ mode}=(V_{mix})(Density_{HC})(HC_{conc}/10^6)/V_f$

$HC_{conc}=HC_e - (HC_d)(1 - (1/DF))$

$HC_e=FID\ HC_e - \Xi(r_x)(X_e)$

Where:

$Density_{HC}$=Density of hydrocarbons=16.42 g/ft³ (0.5800 kg/m₃) for #l petroleum diesel fuel, 16.27 g/ft³ (0.5746 kg/m₃) for #2 diesel, and 16.33 g/ft³ (0.5767 kg/m³) for other fuels, assuming an average carbon to hydrogen ratio of 1:1.93 for #1 petroleum diesel fuel, 1:1.80 for #2 petroleum diesel fuel, and 1:1.85 for hydrocarbons in other fuels at standard conditions.

HC_{conc}=Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent (i.e., equivalent propane×3).

HC_e=Hydrocarbon concentration of the dilute exhaust bag sample, or for diesel continuous heated sampling systems, average hydrocarbon concentration of the dilute exhaust sample as determined from the integrated HC traces, in ppm carbon equivalent. For petroleum-fueled engines, HC_e is the FID measurement. For methanol-fueled and ethanol-fueled engines:

FID HC_e=Concentration of hydrocarbon plus methanol, ethanol and acetaldehyde in dilute exhaust as measured by the FID, ppm carbon equivalent.

r_x=FID response to oxygenated species x (methanol, ethanol or acetaldehyde).

X_e=Concentration of species x (methanol, ethanol or acetaldehyde) in dilute exhaust as determined from the dilute exhaust sample, ppm carbon.

HC_d=Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

(B) $M_{NOx\ mode}$ = Oxides of nitrogen emissions, in grams per hour by mode, are calculated using the following equations:

$M_{NOx\ mode}=(V_{mix})\ (Density_{NO2})\ (NOx_{conc}/10^6)\ /V_f$

$NOx_{conc}=(NOx_e - NOx_d(1 - (1/DF)))$

Where:

$Density_{NO2}$=Density of oxides of nitrogen is 54.16 g/ft³ (1.913 kg/m³), assuming they are in the form of nitrogen dioxide, at standard conditions.

NOx_{conc}=Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm.

NOx_e=Oxides of nitrogen concentration of the dilute exhaust bag sample as measured, in ppm.

NOx_d=Oxides of nitrogen concentration of the dilution air as measured, in ppm.

(C) $M_{CO2\ mode}$=Carbon dioxide emissions, in grams per hour by mode, are calculated using the following equations:

$M_{CO2\ mode}=(V_{mix})\ (Density_{CO2})\ (CO_{2conc}/10^2)\ /V_f$

$CO_{2conc}=CO_{2e} - CO_{2d}(1 - (1/DF))$

Where:

Density CO_2=Density of carbon dioxide is 51.81 g/ft³ (1.830 kg/m³), at standard conditions.

CO_{2conc}=Carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent.

CO_{2e}=Carbon dioxide concentration of the dilute exhaust bag sample, in percent.

CO_{2d}=Carbon dioxide concentration of the dilution air as measured, in percent.

(D)(*1*) $M_{CO\ mode}$=Carbon monoxide emissions, in grams per hour by mode, are calculated using the following equations:

$M_{CO\ mode}=(V_{mix})(Density_{CO})(CO_{conc}/10^6)/V_f$

$CO_{conc}=CO_e - CO_d(1 - (1/DF))$

$CO_d=(1 - 0.000323R)CO_{dm}$

Where:

$Density_{CO}$=Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at standard conditions.

CO_{conc}=Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, ppm.

CO_e=Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in ppm.

$CO_e=(1 - (0.01 + 0.005/\alpha)CO_{2e} - 0.000323RH)CO_{em}$, where α is the hydrogen to carbon ratio as measured for the fuel used.

CO_{em}=Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

RH = Relative humidity of the dilution air, percent.

CO_d=Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

CO_{dm}=Carbon monoxide concentration of the dilution air sample as measured, in ppm.

(*2*) If a CO instrument which meets the criteria specified in § 86.1311 of this chapter is used and the conditioning column has been deleted, CO_{em} must be substituted directly for CO_e, and CO_{dm} must be substituted directly for CO_d.

(E) $M_{CH4\ mode}$=Methane emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH4\ mode}=(V_{mix})\ (Density_{CH4})\ (CH_{4conc}/10^6)\ /V_f$

$CH_{4conc}=C_{CH4e} - C_{CH4d}(1 - (1/DF))$

Where:

$Density_{CH4}$=Density of methane is 18.89 g/ft³ at 68 °F (20 °C) and 760 mm Hg (101.3kPa) pressure.

CH_{4conc}=Methane concentration of the dilute exhaust corrected for background, in ppm.

C_{CH4e}=Methane concentration in the dilute exhaust, in ppm.

C_{CH4d}=Methane concentration in the dilution air, in ppm.

(F) $M_{CH3OH\ mode}$=Methanol emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH3OH\ mode}=(V_{mix})(Density_{CH3OH})(CH_3OH_{conc}/10^6)/V_f$

$CH3OH_{conc}=C_{CH3OHe} - C_{CH3OHd}(1 - (1/DF))$

$C_{CH3OHe}=((3.817)(10^{-2})(T_{EM})(((C_{S1})(AV_{S1})) + (C_{S2})\ (AV_{S2})))/((P_B)(V_{EM}))$

$C_{CH3OHd}=((3.817)(10^{-2})(T_{DM})(((C_{D1})\ (AV_{D1})) + (C_{D2})\ (AV_{D2})))/((P_B)(V_{DM}))$

Where:

$Density_{CH3OH}$=Density of methanol is 37.71 g/ft³ (1.332 kg/m³), at 68 °F (20 °C) and 760 mm Hg (101.3kPa) pressure.

$CH3OH_{conc}$=Methanol concentration of the dilute exhaust corrected for background, in ppm.

C_{CH3OHe}=Methanol concentration in the dilute exhaust, in ppm.

C^{CH3OHd}=Methanol concentration in the dilution air, in ppm.

T_{EM}=Temperature of methanol sample withdrawn from dilute exhaust, °R.

T_{DM}=Temperature of methanol sample withdrawn from dilution air, °R.

P_B=Barometric pressure during test, mm Hg.

V_{EM}=Volume of methanol sample withdrawn from dilute exhaust, ft³.

V_{DM}=Volume of methanol sample withdrawn from dilution air, ft³.

C_S=GC concentration of aqueous sample drawn from dilute exhaust, μg/ml.

C_D=GC concentration of aqueous sample drawn from dilution air, μg/ml.

A_{VS}=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilute exhaust is drawn, ml.

A_{VD}=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilution air is drawn, ml.

₁=first impinger.

$_2$=second impinger.

(G) $M_{C2H5OH\ mode}$=Ethanol emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH3CH2OH\ mode}=(V_{mix})(Density_{CH3CH2OH})((CH_3CH_2OH_{conc}/10^6))/V_f$

$CH_3CH_2OH_{conc}=C_{CH3CH2OHe} - C_{CH3CH2OHd}(1 - (1/DF))$

$C_{CH3CH2OHd}=((2.654)(10^{-2})(T_{DM})(((C_{D1})(AV_{D1})) + (C_{D2})(AV_{D2})))/((P_B)(V_{DM}))$

$C_{CH3CH2OHe}=((2.654)(10^{-2})(T_{EM})(((C_{S1})(AV_{S1})) + (C_{S2})(AV_{S2})))/((P_B)(V_{EM}))$

Where:

$Density_{C2H5OH}$=Density of ethanol is 54.23 g/ft^3 (1.915 kg/m^3), at 68 °F (20 °C) and 760 mm Hg (101.3kPa) pressure.

$CH_3CH_2OH_{conc}$=Ethanol concentration of the dilute exhaust corrected for background, in ppm.

$C_{CH3CH2OHe}$=Ethanol concentration in the dilute exhaust, in ppm.

$C_{CH3CH2OHd}$=Ethanol concentration in the dilution air, in ppm.

T_{EM}= Temperature of ethanol sample withdrawn from dilute exhaust, °R.

T_{DM}=Temperature of ethanol sample withdrawn from dilution air, °R.

P_B=Barometric pressure during test, mm Hg.

V_{EM}=Volume of ethanol sample withdrawn from dilute exhaust, ft^3.

V_{DM}=Volume of ethanol sample withdrawn from dilution air, ft^3.

C_S=GC concentration of aqueous sample drawn from dilute exhaust, µg/ml.

C_D=GC concentration of aqueous sample drawn from dilution air, µg/ml.

A_{VS}= Volume of absorbing reagent (deionized water) in impinger through which ethanol sample from dilute exhaust is drawn, ml.

A_{VD}=Volume of absorbing reagent (deionized water) in impinger through which ethanol sample from dilution air is drawn, ml.

$_1$=first impinger.

$_2$=second impinger.

(H) $M_{CH2O\ mode}$=Formaldehyde emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH2O\ mode}=(V_{mix})(Density_{CH2O})((CH_2O_{conc}/10^6)/V_f$

$CH2O_{conc}=C_{CH2Oe} - C_{CH2Od}(1 - (1/DF))$

$C_{CH2Oe}=((4.069)(10^{-2})(C_{FDE})(V_{AE})(Q)(T_{EF}))/((V_{SE})(P_B)$

$C_{CH2Od}=((4.069)(10^{-2})(C_{FDA})(V_{AA})(Q)(T_{DF}))/(V_{SA})(P_B)$

Where:

$Density_{CH2O}$=Density of formaldehyde is 35.36 g/ft^3 (1.249 kg/m^3), at 68 °F (20 °C) and 760 mmHg (101.3 kPa) pressure.

$CH2O_{conc}$=Formaldehyde concentration of the dilute exhaust corrected for background, ppm.

C_{CH2Oe}=Formaldehyde concentration in dilute exhaust, ppm.

C_{CH2Od}=Formaldehyde concentration in dilution air, ppm.

C_{FDE}=Concentration of DNPH derivative of formaldehyde from dilute exhaust sample in sampling solution, µg/ml.

V_{AE}=Volume of sampling solution for dilute exhaust formaldehyde sample, ml.

Q = Ratio of molecular weights of formaldehyde to its DNPH derivative = 0.1429.

T_{EF}=Temperature of formaldehyde sample withdrawn from dilute exhaust, °R.

V_{SE}=Volume of formaldehyde sample withdrawn from dilute exhaust, ft^3.

P_B=Barometric pressure during test, mm Hg.

C_{FDA}=Concentration of DNPH derivative of formaldehyde from dilution air sample in sampling solution, µg/ml.

V_{AA}=Volume of sampling solution for dilution air formaldehyde sample, ml.

T_{DF}=Temperature of formaldehyde sample withdrawn from dilution air, °R.

V_{SA}=Volume of formaldehyde sample withdrawn from dilution air, ft^3.

(I) $M_{CH3CHO\ mode}$=Acetaldehyde emissions corrected for background, in grams per hour by mode, are calculated using the following equations:

$M_{CH3CHO\ mode}=(V_{mix})(Density_{CH3CHO})((CH_3CHO_{conc}/10^6)/V_f$

$CH3CHO_{conc}=C_{CH3CHOe} - C_{CH3CHOd}(1—(1/DF))$

$C_{CH3CHOe}=((2.774)(10^{-2})(C_{ADE})(V_{AE})(Q)(T_{EF}))/((V_{SE})(P_B)$

$C_{CH3CHOd}=((2.774)(10^{-2})(C_{ADA})(V_{AA})(Q)(T_{DF}))/(V_{SA})(P_B)$

Where:

Density $_{CH3CHO}$=Density of acetaldehyde is 51.88 g/ft^3 (1.833 kg/m^3), at 68 °F (20 °C) and 760 mmHg (101.3 kPa) pressure.

$CH3CHO_{conc}$=Acetaldehyde concentration of the dilute exhaust corrected for background, ppm.

$C_{CH3CHOe}$=Acetaldehyde concentration in dilute exhaust, ppm.

$C_{CH3CHOd}$=Acetaldehyde concentration in dilution air, ppm.

C_{ADE}=Concentration of DNPH derivative of acetaldehyde from dilute exhaust sample in sampling solution, µg/ml.

V_{AE}=Volume of sampling solution for dilute exhaust acetaldehyde sample, ml.

Q=Ratio of molecular weights of acetaldehyde to its DNPH derivative =0.182

T_{EF}=Temperature of acetaldehyde sample withdrawn from dilute exhaust, °R.

V_{SE}=Volume of acetaldehyde sample withdrawn from dilute exhaust, ft^3.

P_B=Barometric pressure during test, mm Hg.

C_{ADA}Concentration of DNPH derivative of acetaldehyde from dilution air sample in sampling solution, µg/ml.

V_{AA}=Volume of sampling solution for dilution air acetaldehyde sample, ml.

T_{DF}=Temperature of acetaldehyde sample withdrawn from dilution air, °R.

V_{SA}=Volume of acetaldehyde sample withdrawn from dilution air, ft^3.

(J) $M_{NMHC\ mode}$=Nonmethane hydrocarbon emissions, in grams per hour by mode.

$M_{NMHC\ mode}=(V_{mix})(Density_{NMHC})((NMHCE_{conc}/10^6))/V_f$

$NMHC_{conc}=NMHC_e—(NMHC_d)(1 - (1/DF))$

$NMHC_e$=FID $HC_e - (r_m)(C_{CH4e})$

$NMHC_d$=FID $HC_d - (r_m)(C_{CH4d})$

Where:

$Density_{NMHC}$=Density of nonmethane hydrocarbons=16.42 g/ft^3 (0.5800 kg/m^3) for # 1 petroleum diesel fuel, 16.27 g/ft^3 (0.5746 kg/m^3) for #2 diesel, and 16.33 for other fuels, assuming an average carbon to hydrogen ratio of 1:1.93 for #1 petroleum diesel fuel, 1:1.80 for #2 petroleum diesel fuel, and 1:1.85 for nonmethane hydrocarbons in other fuels at standard conditions.

$NMHC_{conc}$=Nonmethane hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent (i.e., equivalent propane × 3).

$NMHC_e$=Nonmethane hydrocarbon concentration of the dilute exhaust bag sample:

FID HC_e=Concentration of hydrocarbons in dilute exhaust as measured by the FID, ppm carbon equivalent.

rm=FID response to methane.

C_{CH4e}=Concentration of methane in dilute exhaust as determined from the dilute exhaust sample.

$NMHC_d$=Nonmethane hydrocarbon concentration of the dilution air:

FID HC_d=Concentration of hydrocarbons in dilute exhaust as measured by the FID, ppm carbon equivalent.

r_m=FID response to methane.

C_{CH4d}=Concentration of methane in dilute exhaust as determined from the dilute exhaust sample, ppm.

(4) *Particulate exhaust emissions.* The mass of particulate for a test mode determined from the following equations when a heat exchanger is used (i.e., no flow compensation), and when background filters are used to correct for background particulate levels:

$M_{PM\ mode}$=Particulate emissions, grams per hour by mode.

$M_{PM\ mode}=(WVol)(PM_{conc})(1 + DF)=(V_{mix})(PM_{conc})/V_f$

$PM_{conc}=PM_e - PM_d(1 - (1/DF))$

$PM_e=M_{PMe}/V_{sampe}/10^3$

$PM_d=M_{PMd}/V_{sampd}/10^3$

Where:

PM_{conc}=Particulate concentration of the diluted exhaust sample corrected for background, in g/ft^3

M_{PMe}=Measured mass of particulate for the exhaust sample, in mg, which is the difference in filter mass before and after the test.

M_{PMd}=Measured mass of particulate for the dilution air sample, in mg, which is the difference in filter mass before and after the test.

V_{sampe}=Total wet volume of sample removed from the dilution tunnel for the exhaust particulate measurement, cubic feet at standard conditions.

V_{sampd}=Total wet volume of sample removed from the dilution tunnel for the dilution air particulate measurement, cubic feet at standard conditions.

DF=Dilution factor, which is the volumetric ratio of the dilution air to the raw exhaust sample, calculated as:

$$DF = \frac{WCO2 - WCO2_d}{WCO2_e - WCO2_d} - 1$$

(c) *Humidity calculations.* (1) The following abbreviations (and units) apply to paragraph (b) of this section:

BARO=barometric pressure (Pa).
H=specific humidity, (g H_2O/g of dry air).
K_H=conversion factor=0.6220 g H_2O/g dry air.
M_{air}=Molecular weight of air=28.9645.
M_{H2O}=Molecular weight of water=18.01534.
P_{DB}=Saturation vapor pressure of water at the dry bulb temperature (Pa).
P_{DP}=Saturation vapor pressure of water at the dewpoint temperature (Pa).
P_v=Partial pressure of water vapor (Pa).
P_{WB}=Saturation vapor pressure of water at the wet bulb temperature (Pa).
T_{DB}=Dry bulb temperature (Kelvin).
T_{WB}=Wet bulb temperature (Kelvin).
Y=Water-vapor volume concentration.

(2) The specific humidity on a dry basis of the intake air (H) is defined as:

$H=((K_H)(P_v)/(BARO - P_v))$

(3) The partial pressure of water vapor may be determined using a dew point device. In that case:

$P_v=P_{DP}$

(4) The percent of relative humidity (RH) is defined as:

$RH=(P_v/P_{DB})100$

(5) The water-vapor volume concentration on a dry basis of the engine intake air (Y) is defined as:

$Y=((H)(M_{air})/(M_{H2O})=P_v/(BARO - P_v)$

(d) *NO_X correction factor.* (1) NO_X emission rates ($M_{NOx\ mode}$) shall be adjusted to account for the effects of humidity and temperature by multiplying each emission rate by K_{NOx}, which is calculated from the following equations:

$K_{NOx}=(K)(1 + (0.25(\log K)^2)^{1/2})$
$K=(K_H)(K_T)$
$K_H=[C_1 + C_2(\exp((-0.0143)(10.714))]/[C_1 + C_2(\exp((-0.0143)(1000H))]$
$C_1= -8.7 + 164.5\exp(-0.0218(A/F)_{wet})$
$C_2=130.7 + 3941\exp(-0.0248(A/F)_{wet})$

Where:

$(A/F)_{wet}$=Mass of moist air intake divided by mass of fuel intake.
$K_T=1/[1-0.017(T_{30}-T_A)]$ for tests conducted at ambient temperatures below 30 °C.
K_T=1.00 for tests conducted at ambient temperatures at or above 30 °C.
T_{30}=The measured intake manifold air temperature in the locomotive when operated at 30 °C (or 100 °C, where intake manifold air temperature is not available).
T_A=The measured intake manifold air temperature in the locomotive as tested (or the ambient temperature (°C), where intake manifold air temperature is not available).

(e) *Other calculations.* Calculations other than those specified in this section may be used with the advance approval of the Administrator.

[FR Doc. 01–55530 Filed 11–23–01; 8:45 am]

Editorial Note: On Monday, November 26, 2001, this rule document FR Doc. 01-55530 appeared on 66 FR 58953–58964. Due to additional text being inadvertently added, it is being reprinted in its entirety.

[FR Doc. R1–55530 Filed 11–28–01; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

[Docket No. R–1115]

Federal Reserve Bank Services

Correction

In notice document 01–27779 beginning on page 56310 in the issue of Wednesday, November 7, 2001, make the following corrections:

1. On page 56310, in Table 1, the title should have appeared as follows:

TABLE 1.—PRO FORMA COST AND REVENUE PERFORMANCE [a]

2. On page 56315, in Table 5, in the fourth column, the column title, ''Estimated growth 2001 (percent)'' should read, ''Estimated 2001 growth (percent)''.

3. On the same page, Table 7 should have appeared as follows:

TABLE 7.—SELECTED CHECK FEES

	2001 Current price ranges	2002 price ranges
Items:	(per item)	(per item)
Forward-processed		
City	$0.001 to 0.079	$0.001 to 0.079
RCPC	$0.003 to 0.200	$0.003 to **0.300**
Forward fine-sort		
City	$0.003 to 0.021	$0.003 to 0.021
RCPC	$0.003 to 0.036	**$0.004** to 0.036
Qualified returned checks		
City	$0.08 to 0.85	$0.08 to 0.85
RCPC	$0.10 to 1.15	$0.10 to 1.15
Raw returned checks		
City	$1.05 to 5.00	$1.05 to 5.00
RCPC	$1.05 to 5.00	$1.05 to 5.00
Cash letters:	(per cash letter)	(per cash letter)
Forward-processed [a]	$2.00 to 32.00	**$2.25 to 36.00**
Forward fine-sort	$3.00 to 14.00	**$3.50 to 14.00**
Returned checks: raw/qualified	$2.00 to 14.00	$2.00 to **14.50**
Payor bank services:	(Fixed) (per item)	(Fixed) (per item)
MICR information	$2–15 $0.0020–0.0070	$2–15 **$0.0030–0.0110**
Electronic presentment	$1–11 $0.0005–0.0100	$1–**12** $0.0005–0.0100
Truncation	$2–7 $0.0020–0.0180	$2–7 **$0.0040–**0.0180
Image capture	$2–15 $0.0020–0.02	$2–15 $0.002–0.02
Image delivery	Varies [b] $0.001–0.008	Varies [b] **$0.002**–0.008
Image archive	N/A $0.001–0.01	N/A $0.001–0.01
Image retrieval	N/A $0.3–5	N/A $0.3–5

Note: Bold indicates change from 2001 prices.
[a] Cash letter fees for forward-processed items transported on Check Relay for 2001 and 2002 include a fifty-cent surcharge due to higher fuel costs.

[b] Fixed fee varies by media type.

4. On page 56319, in Table 10, the line below the title, ''In millions of dollars'' should read, ''[In millions of dollars]''.

5. On page 56321, in the second column, in the footnote, in the second to the last line, ''shore'' should read, ''short''.

6. On page 56323, Table 13 should have appeared as follows:

TABLE 13.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	2002	2001
Short-term assets:		
Imputed reserve requirement on clearing balances[27]	$ 678.5	$ 742.4
Investment in marketable securities[27]	5,473.0	6,681.9
Receivables	81.7	77.3
Materials and supplies	3.8	3.6
Prepaid expenses	27.8	23.4
Items in process of collection[28]	4,102.8	3,606.7
Total short-term assets	10,367.6	11,135.3
Long-term assets:		
Premises[29]	431.1	417.5
Furniture and equipment	177.7	185.5
Leasehold improvements and long-term prepayments	70.4	73.9
Prepaid pension costs	800.1	718.5
Total long-term assets	1,479.3	1,395.4
Total assets	$11,846.9	$12,530.7
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	$ 7,377.5	$ 7,424.3
Deferred credit items[28]	3,509.8	3,606.7
Short-term debt[30]	0.0	18.9
Short-term payables	103.9	85.4
Total short-term liabilities	10,991.2	11,135.3
Long-term liabilities:		
Postemployment/retirement benefits	263.4	251.9
Long-term debt[30]	0.0	479.1
Total long-term liabilities	263.4	731.0
Total liabilities	11,254.6	11,866.3
Equity	592.3	664.4
Total liabilities and equity	$11,846.9	$12,530.7

[27] Funded with clearing balances.
[28] Represents float costs that are directly estimated at the service level.
[29] Includes allocations of Board of Governors' assets to priced services of $1.1 million for 2002 and $0.7 million for 2001.
[30] No debt is imputed in 2002 because clearing balances are used as an available funding source.

7. On page 56324, Table 14 should have appeared as follows:

TABLE 14.—PORTION OF CLEARING BALANCES USED TO FUND PRICED SERVICES ASSETS IN 2002

[Dollar amounts in millions]

A. Short-term asset funding:			
Short-term assets to be funded:			
Receivables	$81.7		
Materials and supplies	3.8		
Prepaid expenses	27.8		
Total short-term assets to be funded		113.3	
Short-term funding sources:			
Short-term payables		103.9	
Portion of short-term assets funded with imputed short-term debt or non-core clearing balances[31]			9.4
B. Long-term asset funding:			
Long-term assets to be funded:			
Premises	$431.1		
Furniture and equipment	177.7		
Leasehold improvements and long-term prepayments	70.4		
Prepaid pension cost	800.1		
Total long-term assets to be funded		$1,479.3	
Long-term funding sources:			
Postemployment/retirement benefits liability	263.4		
Imputed equity [32]	592.3		
		855.7	
Portion of long-term assets funded with imputed long-term debt or core clearing balances[31]			623.6
C. Total clearing balances used for funding priced-services assets			$633.0

[31] Clearing balances shown on table 13 are available for funding priced-services assets. Using these balances reduces the amount available for investment in Treasury bills for the net income on clearing balances calculation. Short-term assets are funded with non-core clearing balances. Long-term assets are funded with core clearing balances; a total of $4 billion in balances is available for this purpose. No short- or long-term debt is imputed.

[32] See table 16 for calculation of required imputed equity amount.

8. On page 56325, in Table 15, under the Total column, in the first entry, ''$78.5'' should read, ''$678.5''.

9. On the same page, in Table 16, the title should have appeared as follows:

TABLE 16.—DERIVATION OF THE 2002 AND 2001 PSAF

[Dollar amounts in millions]

10. On page 56326, in the continued Table 16, in the first entry, omit ''Total equity''.

11. On the same page, in Table 17, in the Weighted assests column, in the first entry, ''0.0'' should read, ''$0.0''.

12. On page 56328, in the ''Noncash Collection Fee Schedule—Continued'' table, in the fees column, '' [52]40.00'' should read, ''40.00[52]''.

13. On page 56329, the table title should appear as follows:

TEST AND CONTINGENCY OPTIONS[61]

[FR Doc. C1–27779 Filed 11–28–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770;SFAR 92–2]

RIN 2120–AH54

Flightcrew Compartment Access and Door Designs

Correction

In rule document 01–29280 beginning on page 58650 in the issue of Wednesday, November 21, 2001, make the following correction:

SFAR 92–2 [Corrected]

On page 58653, in the third column, in paragraph 4, in the 10th line, after ''the'' should read, ''flightcrew compartment shall be available to any crewmember during flight, except for''.

[FR Doc. C1–29280 Filed 11–28–01; 8:45 am]

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Federal Register

Thursday,
November 29, 2001

Part II

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision
12 CFR Parts 3 and 567

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Capital Treatment of Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations; Final Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 01–24]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1055]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB31

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 2001–68]

RIN 1550–AB11

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Capital Treatment of Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) are changing their regulatory capital standards to address the treatment of recourse obligations, residual interests and direct credit substitutes that expose banks, bank holding companies, and thrifts (collectively, banking organizations) primarily to credit risk. The final rule treats recourse obligations and direct credit substitutes more consistently than the agencies' current risk-based capital standards and adds new standards for the treatment of residual interests, including a concentration limit for credit-enhancing interest-only strips. In addition, the agencies use credit ratings and certain alternative approaches to match the risk-based capital requirement more closely to a banking organization's relative risk of loss for certain positions in asset securitizations. The final rule does not include the proposed requirement that the sponsor of a revolving credit securitization that involves an early amortization feature hold capital against the amount of assets under management.

This rule is intended to result in a more consistent treatment for similar transactions among the agencies, more consistent regulatory capital treatment for certain transactions involving similar risk, and capital requirements that more closely reflect a banking organization's relative exposure to credit risk.

DATES: This rule is effective January 1, 2002. Any transactions settled on or after January 1, 2002, are subject to this final rule. Banking organizations that enter into transactions before January 1, 2002, may elect early adoption, as of November 29, 2001, of any provision of the final rule that results in a reduced capital requirement. Conversely, banking organizations that enter into transactions before January 1, 2002, that result in increased capital requirements under the final rule may delay the application of this rule to those transactions until December 31, 2002.

FOR FURTHER INFORMATION CONTACT: *OCC:* Amrit Sekhon, Risk Expert, Capital Policy Division, (202) 874–5211; Laura Goldman, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Thomas R. Boemio, Senior Supervisory Financial Analyst, (202) 452–2982, Arleen Lustig, Supervisory Financial Analyst, (202) 452–2987, or Barbara Bouchard, Assistant Director (202) 452–3072, Division of Banking Supervision and Regulation. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), (202) 263–4869, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906; Jason C. Cave, Senior Capital Markets Specialist, Division of Supervision, (202) 898–3548; Miguel D. Browne, Manager, Policy, Risk Management and Operations, Division of Supervision, (202) 898–6789; Marc J. Goldstrom, Counsel, (202) 898–8807 or Michael B. Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654, David Riley, Project Manager, Supervision Policy, (202) 906–6669; Teresa Scott, Counsel (Banking and Finance), (202) 906–6478, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The agencies are amending their regulatory capital standards to change

the treatment of certain recourse obligations, direct credit substitutes, residual interests and other positions in securitized transactions that expose banking organizations to credit risk. This final rule amends the agencies' regulatory capital standards to align more closely the risk-based capital treatment of recourse obligations and direct credit substitutes, to vary the capital requirements for positions in securitized transactions (and certain other credit exposures) according to their relative risk, and to require capital commensurate with the risks associated with residual interests.

A. Asset Securitization

This final rule builds on the agencies' earlier work with respect to the appropriate risk-based capital treatment for recourse obligations and direct credit substitutes. On May 25, 1994, the agencies published in the **Federal Register** a proposal to reduce the capital requirement for low-level recourse transactions, and to treat first-loss (but not second-loss) direct credit substitutes like recourse. 59 FR 27116, May 25, 1994 (the 1994 Notice). The 1994 Notice also contained, in an advance notice of proposed rulemaking, a proposal to use credit ratings from nationally recognized statistical rating organizations (rating agencies) to determine the capital treatment of certain recourse obligations and direct credit substitutes. The OCC, the Board, and the FDIC subsequently implemented the capital reduction for low-level recourse transactions, thereby satisfying the requirements of section 350 of the Riegle Community Development and Regulatory Improvement Act, Pub. L. 103–325, sec. 350, 108 Stat. 2160, 2242 (1994) (CDRI Act).[1] The OTS risk-based capital regulation already included the low-level recourse treatment required by the statute. The agencies did not issue a final regulation on the remaining elements of the 1994 Notice.

On November 5, 1997, the agencies published another notice of proposed rulemaking. 62 FR 59943, November 5, 1997 (1997 Proposal). In the 1997 Proposal, the agencies proposed to use credit ratings from rating agencies to determine the capital requirements for recourse obligations, direct credit substitutes, and senior asset-backed securities in asset securitizations. Additionally, the 1997 Proposal requested comment on a series of options and alternatives to supplement or replace the proposed ratings-based approach.

On March 8, 2000, the agencies published a third notice of proposed rulemaking on recourse and direct credit substitutes. 65 FR 12320, March 8, 2000 (2000 Recourse Proposal). The 2000 Recourse Proposal built on the ratings-based approach and eliminated several options from the 1997 Proposal, including the modified gross-up approach, the ratings benchmark approach, and the historical losses approach. The 2000 Recourse Proposal also permitted the limited use of a banking organization's qualifying internal risk rating system, a rating agency's or other appropriate third party's review of the credit risk of positions in structured programs, or qualifying software to determine the capital requirement for certain unrated direct credit substitutes. Finally, the 2000 Recourse Proposal required a sponsor of a revolving credit securitization that contained an early amortization feature to hold capital against the amount of assets under management in that securitization.

In the international arena, the Basel Committee on Banking Supervision (of which the OCC, the Board, and the FDIC are members) issued a consultative paper entitled, ''A New Capital Adequacy Framework'' in January 2001,[2] on possible revisions to the 1988 Basel Accord.[3] The Basel Consultative Paper discusses potential modifications to the current capital standards, including the capital treatment of securitizations. The standards established by this final rule are consistent in many respects with the Basel Consultative Paper. In particular, the use of external credit ratings issued by rating agencies as a basis for determining the credit quality and the resulting capital treatment of securitizations is consistent with the approach outlined by the Basel Committee. While the agencies believe that it is essential to address securitizations by rule at this time, they intend to consider additional changes to this rule when revisions to the Basel Accord are finalized.

B. Residual Interests

In response to the increased use of securitizations by instititutions, the agencies published Interagency Guidance on Asset Securitization Activities[4] in December 1999 (Securitization Guidance), which addresses the supervisory concerns with the risk management and oversight of securitization programs.[5] The Securitization Guidance highlighted the most significant risks associated with asset securitization, emphasized the agencies' concerns with certain residual interests generated from the securitization and sale of assets, and set forth fundamental risk management practices for banking organizations that engage in securitization activities. In addition, the Securitization Guidance stressed the need for management to implement policies and procedures that include limits on the amount of residual interests that may be carried as a percentage of capital. Furthermore, the Guidance stated that, given the risks presented by these activities, the agencies would actively consider the establishment of regulatory restrictions that would limit or eliminate the amount of certain residual interests that could be recognized in determining the adequacy of regulatory capital.

In September 2000, the agencies published a notice of proposed rulemaking on residual interests in asset securitizations and other transfers of financial assets. 65 FR 57993, September 27, 2000 (Residuals Proposal). The proposal more directly addressed the agencies' concerns with residual interests, which were highlighted in the Securitization Guidance. The Residuals Proposal defined residual interests and proposed a deduction from Tier 1 capital[6] for the amount of residual interests held by a banking organization that exceed 25% of Tier 1 capital (concentration limit). The agencies further proposed that risk-based capital be held dollar-for-dollar against the remaining residuals (dollar-for-dollar capital charge) even if the resulting capital charge exceeded the full risk-based capital charge (*e.g.,* 8%) typically held against the transferred assets that are supported by the residual. The Residuals Proposal also permitted banking organizations to calculate the amount of a residual ''net-of-associated deferred tax liability'' in determining the appropriate amount of

[1] *See* 60 FR 17986, April 10, 1995 (OCC); 60 FR 8177, February 13, 1995 (Board); 60 FR 15858, March 28, 1995 (FDIC).

[2] The January 2001 Basel Consultative Paper amends and refines a Consultative Paper issued in June 1999.

[3] International Convergence of Capital Measurement and Capital Standards (July 1988).

[4] *See* OCC Bulletin 99–46 (December 14, 1999) (OCC); FDIC Financial Institution Letter 109–99 (December 13, 1999) (FDIC); SR Letter 99–37(SUP) (December 13, 1999) (Board); and CEO LTR 99–119 (December 14, 1999) (OTS).

[5] The agencies previously considered, but declined to adopt, capital rules imposing concentration limits on certain residual assets, *i.e.,* interest-only strips. *See* 63 FR 42668 (August 10, 1998). This 1998 rulemaking is discussed more fully at section II.C.3. of this preamble.

[6] The OTS also uses the term ''core capital'' to describe Tier 1 capital.

capital required. In no event would the amount of capital have exceeded the residual interest balance.

C. The Combined Final Rule

The agencies collectively received 32 comments on the 2000 Recourse Proposal and 34 comments on the Residuals Proposal. Comments were received from banks and thrifts, law and accounting firms, trade associations, and government-sponsored enterprises. Commenters generally favored the ratings-based approach proposed in the 2000 Recourse Proposal, but were concerned about the increased capital requirements outlined for residuals in the Residuals Proposal.

The two proposals overlap in scope in that both address leveraged credit risk. As many commenters noted, for certain positions the Residuals Proposal required capital treatment that differed from that required under the 2000 Recourse Proposal. Recognizing the overlap and interaction between the two proposals, the agencies have developed a single final rule that combines aspects of the Residuals Proposal and the 2000 Recourse Proposal.

II. Background

A. Asset Securitization

Asset securitization is the process by which loans or other credit exposures are pooled and reconstituted into securities, with one or more classes or positions, that may then be sold. Securitization [7] provides an efficient mechanism for banking organizations to buy and sell loan assets or credit exposures and thereby to increase the organization's liquidity.

Securitizations typically carve up the risk of credit losses from the underlying assets and distribute it to different parties. The ''first dollar,'' or most subordinate, loss position is first to absorb credit losses; the most ''senior'' investor position is last to absorb losses; and there may be one or more loss positions in between (''second dollar'' loss positions). Each loss position functions as a credit enhancement for the more senior positions in the structure.

For residential mortgages sold through certain Federally-sponsored mortgage programs, a Federal government agency or Federal government-sponsored enterprise (GSE) guarantees the securities sold to investors and may assume the credit risk on the underlying mortgages. However, many of today's asset securitization programs involve assets that are not Federally supported in any way. Sellers of these privately securitized assets therefore often provide other forms of credit enhancement—that is, they take first or second dollar loss positions—to reduce investors' credit risk.

A seller may provide this credit enhancement itself through recourse arrangements. The agencies use the term ''recourse'' to refer to the credit risk that a banking organization retains in connection with the transfer of its assets. Banking organizations have long provided recourse in connection with sales of whole loans or loan participations; today, recourse arrangements frequently are also associated with asset securitization programs. Depending on the type of securitization transaction, the sponsor of a securitization may provide a portion of the total credit enhancement internally, as part of the securitization structure, through the use of excess spread accounts, overcollateralization, retained subordinated interests, or other similar on-balance sheet assets. When these or other on-balance sheet internal enhancements are provided, the enhancements are ''residual interests'' for regulatory capital purposes. Such residual interests are a form of recourse.

A seller may also arrange for a third party to provide credit enhancement [8] in an asset securitization. If the third-party enhancement is provided by another banking organization, that organization assumes some portion of the assets' credit risk. In this final rule, all forms of third-party enhancements, *i.e.,* all arrangements in which a banking organization assumes credit risk from third-party assets or other claims that it has not transferred, are referred to as ''direct credit substitutes.'' [9] The economic substance of a banking organization's credit risk from providing a direct credit substitute can be identical to its credit risk from retaining recourse on assets it has transferred.

Many asset securitizations use a combination of recourse and third-party enhancements to protect investors from credit risk. When third-party enhancements are not provided, the selling banking organization ordinarily retains virtually all of the credit risk on the assets transferred.

B. Risk Management of Exposures Arising From Securitization Activities

While asset securitization can enhance both credit availability and a banking organization's profitability, managing the risks associated with this activity can pose significant challenges. The risks involved, while not new to banking organizations, may be less obvious and more complex than the risks of traditional lending. Specifically, securitization can involve credit, liquidity, operational, legal, and reputational risks in concentrations and forms that may not be fully recognized by management or adequately incorporated into a banking organization's risk management systems.

The capital treatment required by the final rule provides one important way of addressing the credit risk presented by securitization activities. However, a banking organization's compliance with capital standards should be complemented by effective risk management strategies. The agencies expect that banking organizations will identify, measure, monitor and control the risks of their securitization activities (including synthetic securitizations using credit derivatives) and explicitly incorporate the full range of risks into their risk management systems. Management is responsible for having adequate policies and procedures in place to ensure that the economic substance of their risks is fully recognized and appropriately managed. Banking organizations should be able to measure and manage their risk exposure from risk positions in the securitizations, either retained or acquired, and should be able to assess the credit quality of any retained residual portfolio. The formality and sophistication with which the risks of these activities are incorporated into a banking organization's risk management system should be commensurate with the nature and volume of its securitization activities. Banking organizations with significant securitization activities, no matter what the size of their on-balance sheet assets, are expected to have more advanced and formal approaches to manage the risks.

The Securitization Guidance addresses the fundamental risk management practices that should be in

[7] For purposes of this discussion, references to ''securitization'' also include structured finance transactions or programs and synthetic transactions that generally create stratified credit risk positions, which may or may not be in the form of a security, whose performance is dependent upon a pool of loans or other credit exposures. Synthetic transactions bundle credit risks associated with on-balance sheet assets and off-balance sheet items and resell them into the market. For examples of synthetic securitization structures, *see* Banking Bulletin 99–43, November 15, 1999 (OCC); SR Letter 99–32, Capital Treatment for Synthetic CLOs, November 17, 1999 (Board).

[8] As used in this final rule, the terms ''credit enhancement'' and ''enhancement'' refer to both recourse arrangements, including residual interests, and direct credit substitutes.

[9] For purposes of this rule, purchased credit-enhancing interest-only strips are also ''residual interests.''

place at banking organizations that engage in securitization activities. The Guidance stresses the need for management to implement policies and procedures that include limits on the amount of residual interests that may be carried as a percentage of capital. Moreover, the Securitization Guidance sets forth the supervisory expectation that the value of a residual interest in a securitization must be supported by objectively verifiable documentation of the asset's fair market value using reasonable, conservative valuation assumptions. Residual interests that do not meet this expectation, or that fail to meet the supervisory standards set forth in the Securitization Guidance, should be classified as ''loss'' and disallowed as assets of the banking organization for regulatory capital purposes.

Moreover, the agencies indicated in the Securitization Guidance that banking organizations found to be lacking effective risk management programs or engaging in practices that present safety and soundness concerns will be subject to more frequent supervisory review, limitations on residual interest holdings, more stringent capital requirements, or other supervisory response. Thus, failure to understand the risks inherent in securitization activities and to incorporate them into risk management systems and internal capital allocations may constitute an unsafe or unsound banking practice and may result in a downgrading of a banking organization's CAMELS or BOPEC [10] rating.

C. Current Risk-Based Capital Treatment of Recourse, Residual Interests and Direct Credit Substitutes

Currently, the agencies' risk-based capital standards apply different treatments to recourse obligations, including residual interests, and direct credit substitutes. As a result, capital requirements applicable to credit enhancements do not consistently reflect credit risk, even though the risk characteristics are similar. The current rules of the OCC, Board, and FDIC (the banking agencies) are also not entirely consistent with those of the OTS. One objective of the final rule is to remove or reduce these inconsistencies.

1. Recourse and Retained Residual Interests

The agencies' risk-based capital guidelines prescribe a single treatment for assets transferred with recourse (including retained residual interests), regardless of whether the transaction is reported as a sale of assets or as a financing in a bank's Consolidated Report of Condition and Income (Call Report), a bank holding company's FR Y–9 reports, or a thrift's Thrift Financial Report. For a transaction reported as a financing, the transferred assets remain on the balance sheet and are risk-weighted. For a transaction reported as a sale, the entire outstanding amount of the assets sold with recourse (not just the contractual amount of the recourse obligation) is converted into an on-balance sheet credit equivalent amount using a 100% credit conversion factor. This credit equivalent amount (less any applicable recourse liability account recorded on the balance sheet) is then risk-weighted.[11] If the seller's balance sheet includes as an asset (other than a servicing asset) any interest that acts as a credit enhancement to the assets sold, that interest is not risk-weighted a second time as an on-balance sheet item. Thus, regardless of the method used to account for the transfer, risk-based capital is held against the full, risk-weighted amount of the assets transferred with recourse, unless the transaction is subject to the low-level recourse rule.[12]

The low-level recourse rule limits the maximum risk-based capital requirement to the lesser of the banking organization's maximum contractual exposure or the full capital charge against the outstanding amount of assets transferred with recourse. When the low-level recourse rule applies, a banking organization generally holds capital on a dollar-for-dollar basis against the amount of its maximum contractual exposure. In the absence of any other recourse provisions, the on-balance sheet amount of a residual interest represents the maximum contractual exposure. For example, assume that a banking organization securitizes $100 million of credit card loans and records a residual interest on the balance sheet of $5 million that serves as a credit enhancement for the assets transferred. Before the low-level recourse rule was issued, the banking organization was required to hold $8 million of risk-based capital against the $100 million in loans sold, as though the loans had not been sold. Under the low-level recourse rule, the banking organization is required to hold $5 million in capital, that is, ''dollar-for-dollar'' capital up to the banking organization's maximum contractual exposure. However, if the banking organization has recorded a residual interest of $10 million (rather than $5 million), the low-level recourse rule would not have applied. The banking organization would have been required to hold the full capital charge, *i.e.,* $8 million in this example, even though its maximum contractual exposure was $10 million.

For leverage capital ratio purposes, if a transfer with recourse is reported as a financing, the transferred assets remain on the transferring banking organization's balance sheet and the banking organization must hold leverage capital against these assets. If a transfer with recourse is reported as a sale, the assets sold do not remain on the selling banking organization's balance sheet and the banking organization need not hold leverage capital against these assets. However, because certain recourse obligations (*e.g.,* retained residual interests) are recorded as an asset on the seller's balance sheet, leverage capital must be held against those obligations.

2. Direct Credit Substitutes

Direct credit substitutes are treated differently from recourse obligations under the existing risk-based capital standards. Currently, off-balance sheet direct credit substitutes, such as financial standby letters of credit provided for third-party assets, carry a 100% credit conversion factor. However, only the face amount of the direct credit substitute is converted into an on-balance sheet credit equivalent amount. As a result, capital is held only against the face amount of the direct credit substitute. The capital requirement for a recourse arrangement, in contrast, generally is based on the full amount of the assets enhanced.

If a direct credit substitute covers less than 100% of the potential losses on the assets enhanced, the current capital treatment results in a lower capital charge for a direct credit substitute than for a comparable recourse arrangement

[10] CAMELS is the acronym for the supervisory rating assigned to banks and thrifts. It measures Capital, Asset quality, Management, Earnings, Liquidity and Sensitivity to market risk. BOPEC is the acronym for the supervisory rating assigned to bank holding companies. It measures performance of Banking subsidiaries, Other subsidiaries, the Parent holding company, Earnings and Capital.

[11] Consistent with statutory requirements, the agencies' current rules also provide for special treatment of sales of small business obligations with recourse. *See* 12 CFR part 3, appendix A, Section 3(c) (OCC); 12 CFR parts 208 and 225, appendix A, II.B.5 (FRB); 12 CFR part 325, appendix A, II.B.6 (FDIC); 12 CFR 567.6(a)(3) (OTS). *See also* discussion in section III.B.11 of this preamble.

[12] Section 350 of the CDRI Act required the agencies to prescribe regulations providing that the risk-based capital requirement for assets transferred with recourse could not exceed a banking organization's maximum contractual exposure. The agencies may require a higher amount if necessary for safety and soundness reasons. *See* 12 U.S.C. 4808.

even though the economic risk of loss is similar. For example, if a direct credit substitute covers losses up to the first 20% of $100 of enhanced assets, then the on-balance sheet credit equivalent amount equals $20, and risk-based capital is held against only the $20 amount. In contrast, required capital for a first-loss 20% recourse arrangement on $100 of transferred assets is higher because capital is held against the entire $100 of the assets enhanced.

Currently, under the banking agencies' risk-based capital guidelines, purchased subordinated interests receive the same capital treatment as off-balance sheet direct credit substitutes; that is, only the dollar amount of the purchased subordinated interest is placed in the appropriate risk-weight category. In contrast, a banking organization that *retains* a subordinated interest in connection with the transfer of its own assets is considered to have transferred the assets with recourse, even though the economic and credit risks are similar. As a result, the banking organization must hold capital against the carrying amount of the retained subordinated interest as well as the outstanding dollar amount of all senior interests that it supports, subject to the low-level recourse rule.

The OTS risk-based capital regulation treats some forms of direct credit substitutes (*e.g.,* financial standby letters of credit) in the same manner as the banking agencies' guidelines. However, unlike the banking agencies, the OTS treats purchased subordinated interests (except for certain high quality subordinated mortgage-related securities) under its general recourse provisions. The risk-based capital requirement is based on the carrying amount of the subordinated interest plus all senior interests, as though the thrift owned the full outstanding amount of the assets enhanced.

3. Concerns Raised by Current Capital Treatment

The agencies' current leverage and risk-based capital standards raise significant concerns with respect to the treatment of recourse and direct credit substitutes. First, banking organizations are often required to hold different amounts of capital for recourse arrangements and direct credit substitutes that expose the banking organization to similar credit risks. Banking organizations are taking advantage of this anomaly, for example, by taking first-loss positions through financial standby letters of credit, *i.e.,* direct credit substitutes, in asset-backed commercial paper conduits that lend directly to corporate customers. These direct credit substitutes are accorded a significantly lower capital requirement than if a banking organization were to retain a subordinated position in a securitization comprised of loans that had originally been carried on its balance sheet, *i.e.* a recourse obligation, notwithstanding that the credit risks of both positions are virtually the same. Moreover, the current capital standards do not recognize differences in risk associated with different loss positions in asset securitizations, nor do they provide uniform definitions of recourse, residual interest, direct credit substitute, and associated terms.

Residual interests, including retained or purchased credit-enhancing interest-only strips (credit-enhancing I/Os), raise further supervisory concerns. Fair value is the basis for the initial measurement and, in most cases, the ongoing measurement of residual interests on banking organizations' balance sheets. In addition, declines in fair value trigger determinations as to whether other than temporary impairments of residual interests should be recognized. Banking organizations' fair value estimates for these instruments, however, are often based on unwarranted assumptions about expected future cash flows. No active market exists for many residual interests, including credit-enhancing I/Os. As a result, there is no marketplace from which an arm's length market price can readily be obtained to support the residual interest valuation. Recent examinations have highlighted the inherent uncertainty and volatility regarding the initial and ongoing valuation of credit-enhancing I/Os and other residual interests. A banking organization that securitizes assets may overvalue its residual interests, including its credit-enhancing I/Os, and thereby inappropriately generate ''paper profits'' (or mask actual losses) through incorrect cash flow modeling, flawed loss assumptions, inaccurate prepayment estimates, and inappropriate discount rates. This often leads to an inflation of capital, making the banking organization appear more financially sound than it is. Embedded within residual interests, including credit-enhancing I/Os, is a significant level of credit and prepayment risk that make their valuation extremely sensitive to changes in underlying assumptions. Market events can affect the discount rate, prepayment speed or performance of the underlying assets in a securitization transaction and can swiftly and dramatically alter their value. A banking organization that holds an excessive concentration of residual interests in relation to capital presents significant safety and soundness concerns.

Existing regulatory capital rules do not adequately reflect the risks associated with residual interests. Often, banking organizations that securitize and sell higher risk assets are required to retain a large residual interest (often greater than the full capital charge of 8 percent on 100 percent risk-weighted assets) to ensure that the more senior positions in the securitization or other asset sale can receive the desired investment ratings. The booking of a residual interest using gain-on-sale accounting can increase the selling banking organization's capital and thereby allow the banking organization to leverage the capital created from the securitization. This creation of capital is most commonly associated with credit-enhancing I/Os and other spread-related assets. Write-downs of the recorded value of the residual interest due to changes in assumptions concerning loss, prepayment or discount rates can subsequently result in losses. Any losses in excess of the full capital charge (8 percent in the example above) will negatively affect the capital adequacy of the banking organization and, thereby, its safety and soundness.

Moreover, the current capital rules also do not subject either purchased or retained credit-enhancing I/Os to a concentration limit. In 1998, the agencies amended their capital rules to impose strict limits on the amount of nonmortgage servicing assets that may be included in Tier 1 capital.[13] These strict limitations were imposed due to the lack of depth and maturity of the marketplace for such assets, and related concerns about their valuation, liquidity, and volatility.

The agencies, however, considered but declined to adopt similar concentration limits for I/O strips in that 1998 rulemaking, notwithstanding that certain I/O strips possessed cash flow characteristics similar to servicing assets and presented similar valuation, liquidity, and volatility concerns. The agencies chose not to impose such a limitation in recognition of the ''prudential effects of banking organizations relying on their own risk assessment and valuation tools, particularly their interest rate risk, market risk, and other analytical models.'' [14] The agencies expressly indicated that they would continue to review banking organizations' valuation of I/O strips and the concentrations of these assets relative to capital.

[13] See 63 FR 42688 August 10, 1998.

[14] Id. at 42672.

Moreover, the agencies noted that they ''may, on a case-by-case basis, require banking organizations that the agencies determine have high concentrations of these assets relative to their capital, or are otherwise at risk from these assets, to hold additional capital commensurate with their risk exposures.'' [15]

When the servicing assets final rule was issued in 1998, most I/O strips used as credit enhancements did not exceed the full-capital charge on the transferred assets. However, the securitization of higher risk loans has resulted in residual interests, such as credit-enhancing I/O strips, that exceed the full-capital charge. In addition, certain banking organizations engaged in such securitization transactions have significant concentrations in highly volatile credit-enhancing I/Os as a percentage of capital.

III. Description of the Final Rule: Treatment of Recourse, Residual Interests and Direct Credit Substitutes

This final rule amends the agencies' regulatory capital standards as follows:

- It defines the terms ''recourse,'' ''residual interest'' and related terms and revises the definition of ''direct credit substitute'';
- It provides more consistent risk-based capital treatment for recourse obligations and direct credit substitutes;
- It varies the capital requirements for positions in securitization transactions according to their relative risk exposure, using credit ratings from rating agencies to measure the level of risk;
- It permits the limited use of a banking organization's qualifying internal risk rating system to determine the capital requirement for certain unrated direct credit substitutes;
- It permits the limited use of a rating agency's review of the credit risk of positions in structured programs and qualifying software to determine the capital requirement for certain unrated direct credit substitutes and recourse exposures (but not residual interests);
- It requires a banking organization to deduct credit-enhancing interest-only strips, whether retained or purchased, that are in excess of 25% of Tier 1 capital from Tier 1 capital and from assets (concentration limit);
- It requires a banking organization to maintain risk-based capital in an amount equal to the face amount of a residual interest that does not qualify for the ratings-based approach (including credit-enhancing interest-only strips that have not been deducted from Tier 1 capital) (dollar-for-dollar capital); and
- It permits each agency to modify a stated risk-weight, credit conversion factor or credit equivalent amount, if warranted, on a case-by-case basis.

The agencies intend to apply this final rule to the substance, rather than the form, of a securitization transaction. Regulatory capital will be assessed based on the risks inherent in a position within a securitization, regardless of its characterization.

A. The General Approach Taken in the Final Rule

1. Combined Final Rule

As noted above, this final rule harmonizes the proposed capital treatment for residuals with the broader capital treatment for recourse and direct credit substitutes. It also permits the use of ratings to match the risk-based capital requirement more closely to the relative risk of loss in asset securitizations (see discussion below at section III.C.). Highly rated investment-grade positions in securitizations receive a favorable (less than 100 percent) risk-weight. Below-investment grade or unrated positions in securitizations would receive a less favorable risk-weight (generally greater than 100 percent risk-weight). A residual interest retained by a banking organization in an asset securitization (other than a credit-enhancing I/O strip) would be subject to this capital framework. Therefore, if the external rating provided to such a residual interest is investment grade or no more than one category below investment grade, the final rule affords that residual interest more favorable capital treatment than the dollar-for-dollar capital requirement otherwise required for residuals (see discussion below in section III.C.).

2. Managed Assets Capital Charge

The 2000 Recourse Proposal proposed to assess a risk-based capital charge on sponsors of revolving credit securitizations that contain an early amortization feature (managed assets capital charge). All commenters that addressed the managed assets issue opposed the adoption of such a capital charge. Commenters noted that the risks the managed assets capital charge is meant to address (*e.g.*, liquidity risk and credit risk) are not unique to securitizations with early amortization features. Several commenters observed that liquidity risk exists in varying degrees in every banking organization, and implicit recourse arises any time that a banking organization securitizes assets. Commenters also noted that a banking organization faces the credit risk associated with future receivables resulting from revolving loan commitments even if the banking organization is not involved in securitization.

For these reasons, the agencies have agreed at this time not to assess risk-based capital against securitized off-balance sheet assets in revolving securitizations incorporating early amortization provisions. The agencies strongly believe, however, that the risks associated with securitization, including those posed by an early amortization feature, are not fully captured in current regulatory capital rules and need to be addressed. Therefore, the agencies plan to make a more comprehensive assessment of the risks to a selling banking organization posed by the securitization process, including the risks arising from early-amortization features, implicit recourse arrangements and non-credit risks. The agencies have not, as yet, determined whether they will issue a proposed capital rule or supervisory guidance on this matter.

3. Capital Charge for Residual Interests

The final rule imposes a ''dollar-for-dollar'' capital charge on residual interests and a concentration limit on a subset of residual interests—credit-enhancing I/O strips.[16] Under the combined approach, credit-enhancing I/O strips are limited to 25% of Tier 1 capital. Everything above that amount will be deducted from Tier 1 capital. Generally, all other residual interests that do not qualify for the ratings-based approach (including any credit-enhancing I/O strips that were not deducted from Tier 1 capital) are subject to a dollar-for-dollar capital charge. In no event will this combined capital charge exceed the face amount of a banking organization's residual interests.

a. *Concentration Limit Capital Charge.* The final rule imposes a concentration limit on a subset of residual interests. It limits the inclusion of interest-only strips that serve in a credit-enhancing capacity (credit-enhancing I/O strips), whether retained or purchased, to 25% of Tier 1 capital for regulatory capital purposes (see discussion below at III.B.4).

For regulatory capital purposes only, any amount of credit-enhancing I/O strips that exceeds the 25% limit will be deducted from Tier 1 capital and from assets. Credit-enhancing I/O strips that are not deducted from Tier 1 capital, along with all other residual interests not subject to the concentration limit are

[15] Id.

[16] The definitions of residual interests and credit-enhancing I/Os are discussed in Sections III.B.3 and 4, below.

subject to the dollar-for-dollar capital requirement (as described below). In calculating the capital requirement in this manner, banking organizations will not be required to hold capital for more than 100% of the amount of the residual interest. The following example illustrates the concentration calculation required for banking organizations that hold credit-enhancing I/O strips:

A banking organization has purchased and retained credit-enhancing I/O strips with a face amount of $100 on its balance sheet and Tier 1 capital of $320 (before any disallowed servicing assets, disallowed purchased credit card relationships, disallowed credit-enhancing I/O strips and disallowed deferred tax assets). To determine the amount of credit-enhancing I/O strips that fall within the concentration limit, the banking organization would multiply the Tier 1 capital of $320 by 25%, which is $80. The amount of credit-enhancing I/O strips that exceed the concentration limit, in this case $20, is deducted from Tier 1 capital and from assets. For risk-based capital purposes (but not for leverage capital purposes), the remaining $80 is then subject to the dollar-for-dollar capital charge, which is discussed below.

Of those organizations commenting on the proposed concentration limit, most believed that a concentration limit should not be included in the final rule. However, the narrower concentration limit is consistent with commenters' suggestions that only interest-only strips be included in this limit. Moreover, credit-enhancing I/O strips are not aggregated with any servicing assets or purchased credit card relationships for purposes of calculating the 25% concentration limit. In that respect, the concentration limit in the final rule is a less binding constraint than the proposed limit.

The agencies narrowed the scope of assets subject to the concentration limit to credit-enhancing interest-only strips in recognition of the fact that these assets generally serve in a first loss capacity and are typically the most vulnerable to significant write-downs due to changes in valuation assumptions. In addition, interest-only strips are the asset type most often associated with the creation of capital as a result of gain-on-sale accounting, which allows a banking organization to leverage the capital created based on the current recognition of uncertain future cash flows.

b. *Dollar-for-Dollar Capital Charge.* For risk-based capital purposes (but not for leverage capital purposes), all residual interests that do not qualify for the ratings-based approach (including retained and purchased credit-enhancing I/O strips that have not been deducted from Tier 1 capital) are assessed a dollar-for-dollar capital charge. This charge requires that banking organizations hold a dollar in capital for every dollar in residual interests, even if this capital requirement exceeds the full risk-based capital charge on the assets transferred. The agencies believe that the current limited capital requirement could, in certain instances, be insufficient given the risk inherent in large residual interest positions. Because these assets are a subordinated interest in the future cash flows of the securitized assets, they have a concentration of credit and prepayment risk that, depending upon the life of the underlying asset, makes them vulnerable to sudden and sizeable impairment. In addition, when given accounting recognition, certain residuals, such as retained credit-enhancing I/O strips, have the effect of creating capital, which may not be available to support these assets if write-downs become necessary. Recent experience has shown that residual interests can be among the riskiest assets on the balance sheet and, therefore, most deserving of a higher capital charge.

Continuing the above illustration for credit-enhancing I/O strips, once a banking organization deducts the $20 in disallowed credit-enhancing I/O strips, it must hold $80 in total capital for the $80 that represents the credit-enhancing I/O strips not deducted from Tier 1 capital. The $20 deducted from Tier 1 capital, plus the $80 in total risk-based capital required under the dollar-for-dollar treatment, equals $100, the face amount of the credit-enhancing I/O strips. Banking organizations may apply a net-of-tax approach to any credit-enhancing I/O strips that have been deducted from Tier 1 capital, as well as to the remaining residual interests subject to the dollar-for-dollar treatment. This calculation is illustrated in the preamble of the Residuals Proposal at 65 FR 57998. Under this method, a banking organization is permitted, but not required, to net the deferred tax liabilities recorded on its balance sheet, if any, that are associated with the residual interests. This may result in a banking organization holding less than 100% capital against residual interests.

Several commenters on the Residuals Proposal opposed the proposed capital treatment, believing that concerns associated with residual interests should be handled on a case-by-case basis under the agencies' existing supervisory authority. These commenters often referred to the Securitization Guidance, which highlights the supervisory concerns associated with residual interests.

The agencies believe that a minimum capital standard that more closely aligns capital with risk, along with supervisory review, is the appropriate course of action in dealing with residual interests. The agencies remain concerned with the credit risk exposure associated with these deeply subordinated assets, particularly subinvestment grade and unrated residual interests. The lack of an active market makes these assets difficult to value and relatively illiquid.

Most commenters considered the dollar-for-dollar risk-based capital treatment to be overly broad and too harsh, particularly when applied to higher quality residual interests. Commenters also were concerned that the proposed treatment could increase the capital requirement for a residual interest above the capital requirement for the transferred assets when they were held on the banking organization's balance sheet.

The agencies have revised the Residuals Proposal in response to some of the industry's concerns. The agencies understand that the dollar-for-dollar capital requirement could result in a banking organization holding more capital on residual interests than on the underlying assets had they not been sold. However, in many cases the relative size of the retained exposure by the originating banking organization reveals additional market information about the quality of the securitized asset pool. To facilitate a transaction in a manner that meets with market acceptance, the securitization sponsor will often increase the size of the residual. This practice is often indicative of the quality of the underlying assets in the pool. In other words, large residual positions often signal the lower credit quality of the sold assets. Further, a banking organization's use of gain-on-sale accounting affords it the opportunity to create capital, the amount of which is related to a residual interest that may not be worth its reported carrying value. Thus, to mitigate the effects of these gains, the final rule requires banks to hold dollar-for-dollar capital against the related assets.

Commenters suggested several alternative capital treatments such as using the ratings based approach presented in the 2000 Recourse Proposal to set capital requirements for residual interests, excluding certain types of assets from the dollar-for-dollar treatment, and revising the existing capital treatment by requiring additional

capital only against the gain-on-sale ''asset.'' Other commenters proposed to limit the maximum capital requirement to the full capital charge plus any gain-on-sale amount.

The agencies have decided not to alter the dollar-for-dollar capital charge for residual interests that are unrated or rated B or below, although certain residual interests rated BB or better will be eligible for the ratings-based approach.[17] Certain types of assets were not excluded from the definition of ''residual interest'' because every residual reflects a concentration of credit risk and is, therefore, subject to valuation concerns associated with estimating future losses. Further, gain-on-sale accounting, while a concern, was not the only criterion in the agencies' determination of a suitable method for calculating the capital charge for residual interests. Basing the capital charge on the gain-on-sale amount would have made the rule more complex, and would not necessarily result in the maintenance of adequate capital for a residual interest since the gain-on-sale amount can be significantly less than the carrying value of the residual.

B. Definitions and Scope of the Final Rule

1. Recourse

The final rule defines the term ''recourse'' to mean an arrangement in which a banking organization retains, in form or in substance, the credit risk in connection with an asset sale in accordance with generally accepted accounting principles, if the credit risk exceeds a *pro rata* share of the banking organization's claim on the assets. The definition of recourse is consistent with the banking agencies' longstanding use of this term, and incorporates existing agency practices regarding retention of risk in asset sales.

Currently, the term ''recourse'' is not defined explicitly in the banking agencies' risk-based capital guidelines. Instead, the guidelines use the term ''sale of assets with recourse,'' which is defined by reference to the Call Report Instructions. See Call Report Instructions, Glossary (entry for ''Sales of Assets for Risk-Based Capital Purposes''). With the adoption of a definition for recourse in the final rule, the cross-reference to the Call Report instructions in the guidelines is no longer necessary and has been removed. The OTS capital regulation currently provides a definition of the term ''recourse,'' which has also been revised.

Several commenters sought clarification as to whether second lien positions constitute recourse. While second liens are subordinate to first liens, the agencies believe that second liens will not, in most instances, constitute recourse. Second mortgages or home equity loans generally will not be considered recourse arrangements unless they actually function as credit enhancements.

Commenters also requested clarification that third-party enhancements, e.g. insurance protection, purchased by the originator of a securitization for the benefit of investors do not constitute recourse. The agencies generally agree. The purchase of enhancements for a securitization, where the banking organization is completely removed from any credit risk will not, in most instances, constitute recourse. However, if the purchase or premium price is paid over time and the size of the payment is a function of the third-party's loss experience on the portfolio, such an arrangement indicates an assumption of credit risk and would be considered recourse.

2. Direct Credit Substitute

The definition of ''direct credit substitute'' complements the definition of recourse. The term ''direct credit substitute'' refers to an arrangement in which a banking organization assumes, in form or in substance, credit risk associated with an on- or off-balance sheet asset or exposure that was not previously owned by the banking organization (third-party asset) and the risk assumed by the banking organization exceeds the *pro rata* share of the banking organization's interest in the third-party asset. As revised, it also explicitly includes items such as purchased subordinated interests, agreements to cover credit losses that arise from purchased loan servicing rights, credit derivatives and lines of credit that provide credit enhancement. Some purchased subordinated interests, such as credit-enhancing I/O strips, are also residual interests for regulatory capital purposes (see discussion in section III.B.4).

3. Residual Interests

The agencies define residual interests in the final rule as any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes a banking organization to any credit risk directly or indirectly associated with the transferred asset that exceeds a *pro rata* share of that banking organization's claim on the asset, whether through subordination provisions or other credit enhancement techniques. Residual interests do not include interests purchased from a third party, except for credit-enhancing interest-only strips. Examples of these types of assets include credit-enhancing interest-only strips receivable; spread accounts; cash collateral accounts; retained subordinated interests; accrued but uncollected interest on transferred assets that, when collected, will be available to serve in a credit-enhancing capacity; and similar on-balance sheet assets that function as a credit enhancement. The functional-based definition reflects the fact that securitization structures vary in the way they use certain assets as credit enhancements. Therefore, residual interests include any retained on-balance sheet asset that functions as a credit enhancement in a securitization, regardless of how a banking organization refers to the asset in its financial or regulatory reports. In addition, due to their similar risk profile, purchased credit-enhancing I/O strips are residual interests for regulatory capital purposes.

Some commenters thought that the definition of residual interest was too broad and captured assets that are not subject to valuation concerns. The agencies have considered these comments and, as a result, have refined the definition of residual interest in the final rule. In general, the definition of residual interests includes only an on-balance sheet asset that represents an interest created by a transfer of financial assets treated as a sale under GAAP. Interests retained in a securitization or transfer of assets accounted for as a financing under GAAP are generally excluded from the residual interest definition and capital treatment. In the case of GAAP financings, the transferred assets remain on the transferring banking organization's balance sheet and are, therefore, directly included in both the leverage and risk-based capital calculations. Further, when a transaction is treated as a financing, no gain is recognized from an accounting standpoint, which serves to mitigate some of the agencies' concerns. The agencies, however, will monitor securitization transactions that are accounted for as financings under GAAP and will factor into the banking organization's capital adequacy

[17] Credit-enhancing I/Os are not eligible for the ratings-based approach.

determination the risk exposures being assumed or retained in connection with a securitization transaction.

Some commenters stated that sellers' interests should not constitute residual interests because they do not involve a subordinated interest in a stream of cash flows, but rather a *pro-rata* interest. The agencies agree that sellers' interests generally do not function as a credit enhancement and should not be captured by the rule. Thus, if a seller's interest shares losses on a pro rata basis with investors, such an interest would not be a residual interest for purposes of the rule. However, banking organizations should recognize that sellers' interests that are structured to absorb a disproportionate share of losses will be residual interests and subject to the capital treatment described in the final rule.

Other commenters suggested that overcollateralization accounts are not residual interests because the banking organization does not suffer a potential loss from the assets transferred. They argue that certain residual interests, such as interest-only strips, are subject to valuation concerns that might lead to losses. However, other assets, such as overcollateralization or spread accounts, do not present the same level of valuation concerns and, therefore, should not be included in the definition of residual interest.

Overcollateralization and spread accounts are susceptible to the potential future credit losses within the loan pools that they support and, thus, are subject to valuation inaccuracies. Further, the agencies do not want to encourage arbitrage of the final rule by affording banking organizations the opportunity to retain a subordinated position in an asset labeled ''overcollateralization'' when that asset represents the same level of credit risk as another residual interest, just otherwise named. As a result, the definition of residual interest continues to include overcollateralization. The agencies agree that spread accounts and overcollateralization that do not meet the definition of credit-enhancing interest-only strips generally do not expose a banking organization to the same level of risk as credit-enhancing interest-only strips, and thus, have excluded them from the concentration limit. The agencies also believe that where a banking organization provides additional loans to a securitization at inception, but does not book as an asset a beneficial interest for the present value of the future cash flows from these loans, the mere contribution of excess assets, although it constitutes a credit enhancement, will not constitute a residual interest under the final rule because the banking organization has no on-balance sheet asset that is susceptible to a write-down.

The capital treatment designated for a residual interest will apply when a banking organization effectively retains the risk associated with that residual interest, even if the residual is sold. The agencies intend to look to the economic substance of the transaction to determine whether the banking organization has transferred the risk associated with the residual interest exposure. Banking organizations that transfer the risk on residual interests, either directly through a sale, or indirectly through guarantees or other credit risk mitigation techniques, and then reassume this risk in any form will be required to hold risk-based capital as though the residual interest remained on the banking organization's books. For example, if a banking organization sells an asset that is an on-balance sheet credit enhancement to a third party and then writes a credit derivative to cover the credit risk associated with that asset, the selling banking organization must continue to risk weight, and hold capital against, that asset as a residual as if the asset had not been sold.

4. Credit-Enhancing Interest-Only Strips

A credit-enhancing I/O strip is defined in the final rule as ''an on-balance sheet asset that, in form or in substance, (i) represents the contractual right to receive some or all of the interest due on transferred assets; and (ii) exposes the banking organization to credit risk that exceeds its pro rata claim on the underlying assets whether through subordination provisions or other credit enhancing techniques.'' Thus, credit-enhancing I/O strips include any balance sheet asset that represents the contractual right to receive some or all of the remaining interest cash flow generated from assets that have been transferred into a trust (or other special purpose entity), after taking into account trustee and other administrative expenses, interest payments to investors, servicing fees, and reimbursements to investors for losses attributable to the beneficial interests they hold, as well as reinvestment income and ancillary revenues [18] on the transferred assets. Credit-enhancing I/O strips are generally carried on the balance sheet at the present value of the expected net cash flow that the banking organization reasonably expects to receive in future periods on the assets it has securitized, adjusted for some level of prepayments if relevant to that asset class, and discounted at an appropriate market interest rate. Typically, when assets are transferred in a securitization transaction that is accounted for as a sale under GAAP, the accounting recognition given to the credit-enhancing I/O strip on the seller's balance sheet results in the recording of a gain on the portion of the transferred assets that has been sold. This gain is recognized as income, thus increasing the banking organization's capital position. In determining whether a particular interest cash flow functions as a credit-enhancing I/O strip, the agencies will look to the economic substance of the transaction, and will reserve the right to identify other cash flows or spread-related assets as credit-enhancing I/O strips on a case-by-case basis. For example, including some principal payments with interest and fee cash flows will not otherwise negate the regulatory capital treatment of that asset as a credit-enhancing I/O strip. Credit-enhancing I/O strips include both purchased and retained interest-only strips that serve in a credit-enhancing capacity, even though purchased I/O strips generally do not result in the creation of capital on purchaser's balance sheet.

5. Credit Derivatives

The proposed definitions of ''recourse'' and ''direct credit substitute'' cover credit derivatives to the extent that a banking organization's credit risk exposure exceeds its pro rata interest in the underlying obligation. The ratings-based approach therefore applies to rated instruments such as credit-linked notes issued as part of a synthetic securitization. With the issuance of this final rule, the agencies reaffirm the validity of the structural and risk-management requirements of the December 1999 guidance on synthetic securitizations issued by the Board and the OCC,[19] while modifying the risk-based capital treatment detailed therein with the treatment presented in this final rule.

6. Credit-Enhancing Representations and Warranties

When a banking organization transfers assets, including servicing rights, it customarily makes representations and warranties concerning those assets. When a banking organization purchases

[18] According to FASB Statement No. 140, ''Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,'' ancillary revenues include such revenues as late charges on the transferred assets.

[19] *See*, Banking Bulletin 99–43, December, 1999 (OCC); SR Letter 99–32, Capital Treatment for Synthetic CLOs, November 17, 1999 (Board).

loan servicing rights, it may also assume representations and warranties made by the seller or a prior servicer. These representations and warranties give certain rights to other parties and impose obligations upon the seller or servicer of the assets. The 2000 Recourse Proposal addressed those particular representations and warranties that function as credit enhancements, *i.e.,* those where, typically, a banking organization agrees to protect purchasers or some other party from losses due to the default or non-performance of the obligor or insufficiency in the value of collateral. To the extent a banking organization's representations and warranties function as credit enhancements to protect asset purchasers or investors from credit risk, the final rule treats them as recourse or direct credit substitutes.

The final rule is consistent with the agencies' longstanding recourse treatment of representations and warranties that effectively guaranty performance or credit quality of transferred loans. However, the agencies also recognize that banking organizations typically make a number of factual warranties unrelated to ongoing performance or credit quality. These warranties entail operational risk, as opposed to the open-ended credit risk inherent in a financial guaranty, and are excluded from the definitions of recourse and direct credit substitute. Warranties that create operational risk include: warranties that assets have been underwritten or collateral appraised in conformity with identified standards, and warranties that provide for the return of assets in instances of incomplete documentation, fraud or misrepresentation.

Warranties can impose varying degrees of operational risk. For example, a warranty that asset collateral has not suffered damage from hazard entails risk that is offset to some extent by prudent underwriting practices requiring the borrower to provide hazard insurance to the banking organization. A warranty that asset collateral is free of environmental hazards may present acceptable operational risk for certain types of properties that have been subject to environmental assessment, depending on the circumstances. The agencies address appropriate limits for these operational risks through supervision of a banking organization's loan underwriting, sale, and servicing practices. Also, a banking organization that provides warranties to loan purchasers and investors must include associated operational risks in its risk management of exposures arising from loan sale or securitization-related activities. Banking organizations should be prepared to demonstrate to examiners that operational risks are effectively managed.

The final rule requires recourse or direct credit substitute treatment for warranties providing assurances about the actual value of asset collateral, including that the market value corresponds to its appraised value or that the appraised value will be realized in the event of foreclosure and sale. Warranties such as these, which make representations about the future value of a loan or related collateral constitute an enhancement of the loan transferred and, thus, are recourse arrangements or direct credit substitutes. One commenter suggested that a representation that the seller ''has no knowledge'' of circumstances that could cause a loan to be other than investment quality is an operational warranty. The agencies agree that if a seller represents that it has no knowledge of the existence of such circumstances at the time that the loans are transferred the representation would not be recourse.

Commenters sought clarification of the agencies' statement in the 2000 Recourse Proposal that early-default clauses are recourse. Early-default clauses typically give the purchaser of a loan the right to return the loan to the seller if the loan becomes 30 or more days delinquent within a stated period after the transfer—four months after transfer, for example. Once the stated period has expired, the early-default clause will no longer trigger recourse treatment, provided that there is no other provision that constitutes recourse.

Several commenters stated that early-default clauses are not recourse because they are designed to cover loans that, due to their non-payment within the first few months of origination, most likely contained underwriting deficiencies. Early-default clauses can allow for a reasonable but limited period of time for a purchaser to review loan file documentation. Therefore, the final rule specifically exempts from recourse treatment, for a limited period of time, these types of warranties on certain 1–4 family residential mortgage loans. The agencies have modified the definition of ''credit-enhancing representations and warranties'' to exclude warranties, such as early-default clauses and similar warranties that permit the return of qualifying 1–4 family residential first mortgage loans for a maximum period of 120 days from the date of transfer. To be excluded from the definition, however, these warranties must cover only 1–4 family residential mortgage loans that are eligible for the 50% risk weight and that were originated within 1 year of the date of transfer. All other early-default clauses, including those for periods of greater than 120 days on qualifying 1–4 family residential first mortgages, are recourse or direct credit substitutes.

The 2000 Recourse Proposal also sought comment on premium refund clauses. A premium refund clause is a warranty that obligates a seller who has sold a loan at a price in excess of par, *i.e.,* at a premium, to refund the premium, either in whole or in part, if the loan defaults or is prepaid within a certain period of time. Commenters responded that premium refund clauses are not recourse because they reflect interest rate risk, not credit risk.

Although premium refund clauses can be triggered as a result of prepayments, they can also be triggered by defaults. Accordingly, premium refund clauses are generally credit-enhancing representations and warranties under the final rule. However, the agencies have included an exception for premium refund clauses on U.S. government-guaranteed loans and qualifying 1–4 family first mortgage loans that impose a refund obligation on a seller for a period not to exceed 120 days from the date of transfer. These types of loans hold significantly reduced credit risk.

For those warranties not exempt from recourse or direct credit substitute treatment under the final rule, industry concerns about assets that are delinquent at the time of transfer or unsound originations may be dealt with by warranties directly addressing the condition of the asset *at the time of transfer* (*i.e.,* creation of an above described operational warranty) and compliance with stated underwriting standards. Alternatively, banking organizations might create warranties with exposure caps that would permit the banking organization to take advantage of the low-level recourse rule.

7. Clean-Up Calls

The final rule clarifies the agencies' longstanding interpretations on the use of clean-up calls in a securitization. A clean-up call is an option that permits a servicer or its affiliate (which may be the originator) to take investors out of their positions in a securitization before all of the transferred loans have been repaid. The servicer accomplishes this by repurchasing the remaining loans in the pool once the pool balance has fallen below some specified level. This option in a securitization raises longstanding agency concerns that a banking organization may implicitly assume a credit-enhancing position by

exercising the option when the credit quality of the securitized loans is deteriorating. An excessively large clean-up call facilitates a securitization servicer's ability to take investors out of a pool to protect them from absorbing credit losses and, thus, may indicate that the servicer has retained or assumed the credit risk on the underlying pool of loans.

As a result, clean-up calls are treated generally as recourse and direct credit substitutes. However, because clean-up calls can also serve an administrative function in the operation of a securitization, the agencies have included a limited exemption for these options. Under the final rule, an agreement that permits a banking organization that is a servicer or an affiliate of the servicer to elect to purchase loans in a pool is not recourse or a direct credit substitute if the agreement permits the banking organization to purchase the remaining loans in a pool when the balance of those loans is equal to or less than 10 percent of the original pool balance. However, an agreement that permits the remaining loans to be repurchased when their balance is greater than 10 percent of the original pool balance is considered to be recourse or a direct credit substitute. The exemption from recourse or direct credit substitute treatment for a clean-up call of 10 percent or less recognizes the real market need to be able to call a transaction when the costs of keeping it outstanding are burdensome. However, to minimize the potential for using such a feature as a means of providing support for a troubled portfolio, a banking organization that exercises a clean-up call should not repurchase any loans in the pool that are 30 days or more past due. Alternatively, the banking organization should repurchase the loans at the lower of their estimated fair value or their par value plus accrued interest. Regardless of the size of the clean-up call, the agencies will closely scrutinize any transaction where the banking organization repurchases deteriorating assets for an amount greater than a reasonable estimate of their fair value and will take action accordingly.

8. Loan Servicing Arrangements

The definitions of ''recourse'' and ''direct credit substitute'' cover loan servicing arrangements if the banking organization, as servicer, is responsible for credit losses associated with the serviced loans. However, cash advances made by residential mortgage servicers to ensure an uninterrupted flow of payments to investors or the timely collection of the mortgage loans are specifically excluded from the definitions of recourse and direct credit substitute, provided that the residential mortgage servicer is entitled to reimbursement for any significant advances and this reimbursement is not subordinate to other claims. To be excluded from recourse and direct credit substitute treatment, the banking organization, as servicer, should make an independent credit assessment of the likelihood of repayment of the servicer advance prior to advancing funds and should only make such an advance if prudent lending standards are met. Risk-based capital is assessed only against the amount of the cash advance, and the advance is assigned to the risk-weight category appropriate to the party obligated to reimburse the servicer.[20]

If a residential mortgage servicer is not entitled to full reimbursement, then the maximum possible amount of any nonreimbursed advances on any one loan must be contractually limited to an insignificant amount of the outstanding principal on that loan. Otherwise, the servicer's obligation to make cash advances will not be excluded from the definitions of recourse and direct credit substitute. This treatment reflects the agencies' traditional view that servicer cash advances meeting these criteria are part of the normal mortgage servicing function and do not constitute credit enhancement.

Commenters responding to the 2000 Recourse Proposal generally supported the proposed definition of servicer cash advances. Some commenters, however, expressed concern over the description of ''insignificant'' nonreimbursed advances as advances on any one loan that are contractually limited to no more than 1% of the outstanding principal amount on that loan. They argued that this 1% limit would unfairly penalize smaller loans and was unnecessary.

The agencies suggested the 1% limit in the 2000 Recourse Proposal in response to commenters' requests for guidance from commenters on the 1997 Proposal. However, upon reconsideration, the agencies agree that the 1% limit is unnecessarily restrictive for smaller loans. Accordingly, the final rule does not contain this benchmark.

Banking organizations that act as servicers, however, should establish policies on servicer advances and use discretion in determining what constitutes an ''insignificant'' servicer advance. The agencies will monitor industry practice and may revisit the issue if this exemption from recourse treatment is used inappropriately. Further, the agencies will exercise their supervisory authority to apply recourse or direct credit substitute treatment to servicer cash advances that expose a banking organization acting as servicer to excessive levels of credit risk.

9. Interaction With Market Risk Rule

Some commenters responding to the 2000 Recourse Proposal and the Residuals Proposal asked for clarification of the treatment of a transaction covered by both the market risk rule and the recourse rule. This final rule generally applies to positions held in the banking book.[21] For banking organizations that comply with the market risk rules,[22] positions in the trading book arising from asset securitizations, including recourse obligations, residual interests, and direct credit substitutes, should be treated for risk-based capital purposes in accordance with those rules. However, these banking organizations remain subject to the 25 percent concentration limit for credit-enhancing I/O strips.

10. Reservation of Authority

Banking organizations are developing novel transactions that do not fit well into the risk-weight categories and credit conversion factors in the current standards. Banking organizations also are devising novel instruments that nominally fit into a particular risk-weight category or credit conversion factor, but that impose risks on the banking organization at levels that are not commensurate with the nominal risk-weight or credit conversion factor for the asset, exposure or instrument. Accordingly, the agencies have clarified their authority, on a case-by-case basis, to determine the appropriate risk-weight for assets and credit equivalent amounts and the appropriate credit conversion factor for off-balance sheet items in these circumstances.

Exercise of this authority by the agencies may result in a higher or lower risk weight for an asset or credit

[20] The Board has issued a notice of proposed rulemaking that considers whether a special purpose entity should be characterized as a bank affiliate and whether asset securitizations should be classified as covered transactions pursuant to section 23A of the Federal Reserve Act, 12 U.S.C. 371c. *See* ''Transactions between Banks and Their Affiliates'', 66 FR 24186, May 11, 2001 and 66 FR 33649, June 25, 2001. Any final rule resulting from this Proposal could affect the regulatory capital treatment of servicer cash advances.

[21] This rule applies also to banking organizations that hold positions in their trading book, but are not otherwise subject to the market risk rules.

[22] The OTS did not participate in the market risk rulemaking. As a result, certain OTS definitions—for example, the OTS's definition of ''face amount'';—differ from those of the other agencies.

equivalent amount or a higher or lower credit conversion factor for an off-balance sheet item. This reservation of authority explicitly recognizes the agencies' retention of sufficient discretion to ensure that banking organizations, as they develop novel financial assets, will be treated appropriately under the regulatory capital standards. Under this authority, the agencies reserve the right to assign risk positions in securitizations to appropriate risk categories on a case-by-case basis if the credit rating of the risk position is determined to be inappropriate.

11. Alternative Capital Calculation for Small Business Obligations

Certain commenters noted that the capital treatment in the Residuals Proposal would have a significant negative impact on banking organizations' small business lending. According to these commenters, the dollar-for-dollar capital requirement and concentration limits for residual interests arising from asset securitizations under the Residuals Proposal would apply to asset securitizations involving the transfer of small business obligations. These commenters concluded that, unless the Residuals Proposal is amended to exclude small business obligations from coverage, the capital treatment in the final rule would contravene section 208 of the CDRI Act. The final rule retains the alternative capital calculation for small business obligations that implements section 208 of the CDRI Act.

C. Ratings-Based Approach: Traded and Non-Traded Positions

As described in section II.A., each loss position in an asset securitization structure functions as a credit enhancement for the more senior loss positions in the structure. Currently, the risk-based capital standards do not vary the capital requirement for different credit enhancements or loss positions to reflect differences in the relative credit risk represented by the positions.

To address this issue, the agencies are implementing a multi-level, ratings-based approach to assess capital requirements on recourse obligations, residual interests (except credit-enhancing I/O strips), direct credit substitutes, and senior and subordinated securities in asset securitizations based on their relative exposure to credit risk. The approach uses credit ratings from the rating agencies to measure relative exposure to credit risk and determine the associated risk-based capital requirement. The use of credit ratings provides a way for the agencies to use determinations of credit quality relied upon by investors and other market participants to differentiate the regulatory capital treatment for loss positions representing different gradations of risk. This use permits the agencies to give more equitable treatment to a wide variety of transactions and structures in administering the risk-based capital system.

The use of credit ratings in the final rule is similar to the 2000 Recourse Proposal. Although many commenters expressed concerns about specific aspects of the 2000 Recourse Proposal, commenters generally supported the goal of making the capital requirements for asset securitizations more rational and efficient, and viewed the 2000 Recourse Proposal as a positive step toward this goal. The agencies have made several changes to the 2000 Recourse Proposal and Residual Proposal in response to commenters' concerns and based on further consideration of the issues.

Several commenters on the 2000 Recourse Proposal expressed concern over reliance on external rating agency ratings for the purposes of assessing risk-based capital charges for banking organizations. They asserted that credit ratings are not intended to measure risks associated with regulatory capital and that, without market discipline imposed on them, the ratings may not be reliable for that purpose. They also noted an inherent conflict of interest between a rating agency's ability to objectively assign a rating upon which regulators can rely in imposing capital charges and one that measures the risks in a securitization for the banking organization who is paying for the rating.

Investors rely on ratings to make investment decisions. This reliance exerts market discipline on the rating agencies and gives their ratings market credibility. The market's reliance on ratings, in turn, gives the agencies confidence that it is appropriate to consider ratings as a major factor in the risk weighting of assets for regulatory capital purposes. Further, the use of a single rating will only be adequate under the ratings-based approach for a position that is traded. The agencies, however, reserve the authority to override the use of certain ratings or the ratings on certain instruments, either on a case-by-case basis or through broader supervisory policy, if necessary or appropriate to address the risk that an instrument poses to banking organizations.

Under the ratings-based approach, the capital requirement for a position is computed by multiplying the face amount of the position by the appropriate risk weight determined in accordance with the following tables.[23] The first chart shown below maps long-term ratings to the appropriate risk-weights under the final rule. In response to requests from commenters, the agencies have also included another chart (the second chart shown below) that maps short-term ratings for asset-backed commercial paper to the appropriate risk-weights under this rule.

Long-term rating category	Examples	Risk weight (In percent)
Highest or second highest investment grade	AAA or AA	20
Third highest investment grade	A	50
Lowest investment grade	BBB	100
One category below investment grade	BB	200
More than one category below investment grade, or unrated	B or unrated	([1])

Short-term rating category	Examples	Risk weight (In percent)
Highest investment grade	A–1, P–1	20
Second highest investment grade	A–2, P–2	50
Lowest investment grade	A–3, P–3	100

[23] The rating designations (e.g., ''AAA,'' ''BBB,'' ''A–1,'' and ''P–1'') used in the charts are illustrative only and do not indicate any preference for, or endorsement of, any particular rating agency designation system.

Short-term rating category	Examples	Risk weight (In percent)
Below investment grade	Not Prime	([1])

[1] Not eligible for ratings-based approach.

The chart for short-term ratings is not identical to the long-term ratings table because the rating agencies do not assign short-term ratings using the same methodology as long-term ratings. Each short-term rating category covers a range of longer-term rating categories.[24] For example, a P–1 rating could map to a long-term rating as high as Aaa or as low as A3.

Under the final rule, the ratings-based approach is available for asset-backed securities,[25] recourse obligations, direct credit substitutes and residual interests (other than credit-enhancing I/O strips). The agencies have excluded credit-enhancing I/O strips from the ratings-based approach based on their high risk profile, discussed above at section III.B.4.

While the ratings-based approach is available for both traded and untraded positions, the rule applies different requirement to these positions. A traded position, for example, is only required to be rated by one rating agency. A position is defined as ''traded'' if, at the time it is rated by an external rating agency, there is a reasonable expectation that in the near future: (1) The position may be sold to unaffiliated investors relying on the rating; or (2) an unaffiliated third party may enter into a transaction (*e.g.,* a loan or repurchase agreement) involving the position in which the third party relies on the rating of the position.

A few commenters expressed concern over the provision in the 2000 Recourse Proposal that allowed a banking organization to use the single highest rating obtained on a traded position, stating that doing so encourages rating-shopping. The agencies agree and, therefore, the final rule requires a banking organization to use the lowest single rating assigned to a traded position. Moreover, if a rating changes, the banking organization must use the new rating.

Rated, but untraded, asset-backed securities, recourse obligations, direct credit substitutes and residual interests may also be eligible for the ratings-based approach if they meet certain conditions. To qualify, the position must be rated by more than one rating agency, the ratings must be one category below investment grade or better for long-term positions (or investment grade or better for short-term positions) by all rating agencies providing a rating, the ratings must be publicly available, and the ratings must be based on the same criteria used to rate securities that are traded. If the ratings are different, the lowest single rating will determine the risk-weight category.

Recourse obligations and direct credit substitutes (other than residual interests) that do not qualify for the ratings-based approach (or the internal ratings, program ratings or computer program ratings approaches outlined below) receive ''gross-up'' treatment, that is, the banking organization holding the position must hold capital against the amount of the position plus all more senior positions, subject to the low-level exposure rule.[26] This grossed-up amount is placed into a risk-weight category according to the obligor or, if relevant, the guarantor or the nature of the collateral. The grossed-up amount multiplied by both the risk-weight and 8 percent is never greater than the full capital charge that would otherwise be imposed on the assets if they were on the banking organization's balance sheet.[27]

Residual interests that are not eligible for the ratings-based approach receive dollar-for-dollar treatment. Dollar-for-dollar treatment means, effectively, that one dollar in total risk-based capital must be held against every dollar of a residual interest, except for credit-enhancing I/Os that have already been deducted from Tier 1 capital under the concentration limit.[28] Thus, the capital requirement for residual interests is not limited by the 8 percent cap in place under the current risk-based capital system.

Finally, an unrated position that is senior or preferred in all respects (including collateralization and maturity) to a rated position that is traded is treated as if it had the rating assigned to the rated position. The banking organization, however, must satisfy its supervisory agency that such treatment is appropriate. Senior unrated positions qualify for the risk weighting of the subordinated rated positions in the same securitization transaction as long as the subordinated rated position (1) is traded and (2) remains outstanding for the entire life of the unrated position, thus providing full credit support for the term of the unrated position.

D. Unrated Positions

In response to the 2000 Recourse Proposal and earlier proposals, commenters expressed concern over the expense and inefficiency of requiring the purchase of ratings to qualify for the ratings-based approach and advocated alternative approaches. In response to these concerns, the final rule incorporates three alternative approaches for determining the capital

[24] *See*, for example, Moody's Global Ratings Guide, June 2001, p.3.

[25] Similar to the banking agencies' current approach under which ''stripped'' mortgage-backed securities are not eligible for risk weighting at 50% on a ''pass-through'' basis, stripped mortgage-backed securities are ineligible for the 20% or 50% risk categories under the ratings-based approach. Currently, OTS also includes most interest-only and principal-only strips in the 100% risk-weight category. *See* 12 CFR 567.6(a)(1)(iv) (introductory statement) and (a)(1)(iv)(M). However, certain high-quality stripped mortgage-related securities are eligible for a 20% risk weight under the OTS' capital standards. OTS recently proposed to conform its capital treatment for high-quality stripped mortgage-related securities to that of other agencies, and received not comments in opposition to this change. *See* 66 FR 15049, March 15, 2001. Accordingly, OTS in conforming these aspects of its rule to those of the other agencies.

[26] ''Gross-up'' treatment means that a position is combined with all more senior positions in the transaction. The result is then risk-weighted based on the obligor or, if relevant, the guarantor or the nature of the collateral. For example, if a banking organization retains a first-loss position (other than a residual interest) in a pool of mortgage loans that qualify for a 50% risk weight, the banking organization would include the full amount of the assets in the pool, risk-weighted at 50%, in its risk-weighted assets for purposes of determining its risk-based capital ratio. The low-level exposure rule provides that the dollar amount of risk-based capital required for assets transferred with recourse should not exceed the maximum dollar amount for which a banking organization is contractually liable. *See* 12 CFR part 3, appendix A, Section 3(d) (OCC); 12 CFR 208 and 225, appendix A, III.D.1(g) (FRB); 12 CFR part 325, appendix A, II.D.1 (FDIC); 12 CFR 567.6(a)(2)(i)(C) (OTS).

[27] For assets that are assigned to the 100 percent risk-weight category, the minimum capital charge is 8 percent of the amount of assets transferred, and banking organizations are required to hold 8 cents of capital for every dollar of assets transferred with recourse. For assets that are assigned to the 50 percent risk-weight category, the minimum capital charge is 4 cents of capital for every dollar of assets transferred with recourse.

[28] Residual interests that are retained or purchased credit-enhancing I/O strips are first subject to a capital concentration limit of 25 percent of Tier 1 capital. For risk-based capital purposes (but not for leverage capital purposes), once this concentration limit is applied, a banking organization must then hold dollar-for-dollar capital against the face amount of credit-enhancing I/O strips remaining.

requirements for certain unrated direct credit substitutes and recourse obligations. Under each of these approaches, the banking organization must satisfy its supervisory agency that the use of the approach is appropriate for the particular banking organization and for the exposure being evaluated. The final rule limits, however, the risk weight that may be applied to an exposure under these alternative approaches to a minimum of 100%.

Under the 2000 Recourse Proposal, only direct credit substitutes could qualify for beneficial risk-weighting using the three alternatives to external ratings (i.e., internal ratings, program ratings, and computer programs). Commenters questioned the agencies' limitation of the application of these alternative approaches to direct credit substitutes. After considering the arguments for extending the application of these approaches to recourse obligations, the agencies have decided not to permit the internal ratings-based approach to apply to any positions other than direct credit substitutes issued in connection with an asset-backed commercial paper program. Industry research and empirical evidence indicates that these positions are more likely than recourse positions to be of investment-grade credit quality, and that the banking organizations providing these direct credit substitutes are more likely to have internal risk rating systems for these credit enhancements that are sufficiently reliable for risk-based capital calculations.

However, the agencies have reconsidered their position with respect to qualifying program ratings and computer program ratings. The final rule extends beneficial risk-weighting treatment, through the use of qualifying program and computer ratings, to off-balance sheet recourse obligations to accommodate structured finance programs. By extending this treatment to off-balance sheet recourse obligations the final rule facilitates the structuring of these programs in a more efficient manner. The agencies believe this result is appropriate because of the similarity of economic risks between off-balance sheet direct credit substitutes and off-balance sheet recourse obligations.

The final rule, however, does not extend the use of internal ratings, program ratings or computer program ratings to residual interests. Such a change would not facilitate existing asset-backed commercial paper programs and structured finance programs, which generally do not book any on-balance sheet residuals. Further, residual interests by their nature are generally illiquid, hard-to-value assets, often with limited performance history. These characteristics make determining internal capital requirements difficult. The agencies also believe that the economic risk differs between residual interests and off-balance sheet recourse and direct credit substitute exposures. Therefore, based on the risks associated with residual interests, the agencies have decided for the present not to allow banking organizations to use internal ratings, program ratings or computer programs to apply a risk-based capital treatment more favorable than a dollar-for-dollar capital requirement to these positions.

The agencies will continue to evaluate the effectiveness and reliability of these alternative approaches for assessing regulatory capital at banking organizations and may revisit this issue if, over time, new information indicates that reconsideration is warranted.

1. Use of Banking Organizations' Internal Risk Ratings

The final rule permits a banking organization with a qualifying internal risk rating system to use that system to apply the ratings-based approach to the banking organization's unrated direct credit substitutes in asset-backed commercial paper programs. Internal risk ratings could be used to qualify such a credit enhancement for a risk weight of 100% or 200% under the ratings-based approach, but not for a risk weight of less than 100%. This relatively limited use of internal risk ratings for risk-based capital purposes is a step toward potential adoption of a broader use of internal risk ratings as discussed in the Basel Committee's June 1999 and January 2001 Consultative Papers on a new Basel Capital Accord.

Most sophisticated banking organizations that participate extensively in the asset securitization business assign internal risk ratings to their credit exposures, regardless of the form of the exposure. Usually, internal risk ratings more finely differentiate the credit quality of a banking organization's exposures than the categories that the agencies use to evaluate credit risk during examinations of banking organizations (pass, substandard, doubtful, loss). Individual banking organizations' internal risk ratings may be associated with a certain probability of default, loss in the event of default, and loss volatility.

The credit enhancements that sponsors obtain for their commercial paper conduits are rarely rated or traded. If an internal risk ratings approach were not available for these unrated credit enhancements, the provider of the enhancement would have to obtain two ratings solely to avoid the gross-up treatment that would otherwise apply to non-traded positions in asset securitizations for risk-based capital purposes. However, before a provider of an enhancement decides whether to provide a credit enhancement for a particular transaction (and at what price), the provider will generally perform its own analysis of the transaction to evaluate the amount of risk associated with the enhancement.

Allowing banking organizations to use internal credit ratings harnesses information and analyses that they already generate rather than requiring them to obtain independent but potentially redundant ratings from outside rating agencies. An internal risk ratings approach therefore has the potential to be less costly than a ratings-based approach that relies exclusively on ratings by the rating agencies for the risk-weighting of these positions.

Internal risk ratings that correspond to the rating categories of the rating agencies could be mapped to risk weights under the agencies' capital standards in a way that would make it possible to differentiate the riskiness of various unrated direct credit substitutes in asset-backed commercial paper programs based on credit risk. However, the use of internal risk ratings raises concerns about the accuracy and consistency of the ratings, especially because the mapping of ratings to risk-weight categories will give banking organizations an incentive to rate their risk exposures in a way that minimizes the effective capital requirement. A banking organization engaged in asset-backed commercial paper securitization activities that wishes to use the internal risk ratings approach must be able to demonstrate to the satisfaction of its primary regulator, prior to relying upon its use, that the bank's internal credit risk rating system is adequate. Adequate internal risk rating systems usually:

(1) Are an integral part of an effective risk management system that explicitly incorporates the full range of risks arising from an organization's participation in securitization activities. The system must also fully take into account the effect of such activities on the organization's risk profile and capital adequacy as discussed in Section II.B.

(2) Link their ratings to measurable outcomes, such as the probability that a position will experience any losses, the expected losses on that position in the event of default, and the degree of variance in losses given default on that position.

(3) Separately consider the risk associated with the underlying loans and borrowers and the risk associated with the specific positions in a securitization transaction.

(4) Identify gradations of risk among ''pass'' assets, not just among assets that have deteriorated to the point that they fall into ''watch'' grades. Although it is not necessary for a banking organization to use the same categories as the rating agencies, its internal ratings must correspond to the ratings of the rating agencies so that the agencies can determine which internal risk rating corresponds to each rating category of the rating agencies. A banking organization would have the responsibility to demonstrate to the satisfaction of its primary regulator how these ratings correspond with the rating agency standards used as the framework for this final rule. This is necessary so that the mapping of credit ratings to risk weight categories in the ratings-based approach can be applied to internal ratings.

(5) Classify assets into each risk grade, using clear, explicit criteria, even for subjective factors.

(6) Have independent credit risk management or loan review personnel assign or review credit risk ratings. These personnel should have adequate training and experience to ensure that they are fully qualified to perform this function.

(7) Periodically verify, through an internal audit procedure, that internal risk ratings are assigned in accordance with the banking organization's established criteria.

(8) Track the performance of its internal ratings over time to evaluate how well risk grades are being assigned, make adjustments to its rating system when the performance of its rated positions diverges from assigned ratings, and adjust individual ratings accordingly.

(9) Make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of the rating agencies.

If a banking organization's rating system is no longer found to be adequate, the banking organization's primary regulator may preclude the banking organization from applying the internal risk ratings approach to new transactions for risk-based capital purposes until it has remedied the deficiencies. Additionally, depending on the severity of the problems identified, the primary regulator may also decline to rely on the internal risk ratings that the banking organization had applied to previous transactions for purposes of determining the banking organization's regulatory capital requirements.

2. Ratings of Specific Positions in Structured Financing Programs

Under the final rule, a banking organization may use a rating obtained from a rating agency for unrated direct credit substitutes or recourse obligations (but not residual interests) in structured finance programs that satisfy specifications set by the rating agency. The banking organization would need to demonstrate that the rating meets the same rating standards generally used by the rating agency for rating traded positions. In addition, the banking organization must also demonstrate to its primary regulator's satisfaction that the criteria underlying the rating agency's assignment of ratings for the program are satisfied for the particular direct credit substitute or recourse exposure.

To use this approach, a banking organization must demonstrate to its primary regulator that it is reasonable and consistent with the standards of this final rule to rely on the rating of positions in a securitization structure under a program in which the banking organization participates if the sponsor of that program has obtained a rating. This aspect of the final rule is most likely to be useful to banking organizations with limited involvement in securitization activities. In addition, some banking organizations extensively involved in securitization activities already rely on ratings of the credit risk positions under their securitization programs as part of their risk management practices. Such banking organizations also could rely on such ratings under this final rule if the ratings are part of a sound overall risk management process and the ratings reflect the risk of non-traded positions to the banking organizations.

This approach can be used to qualify a direct credit substitute or recourse obligation (but not a residual interest) for a risk weight of 100% or 200% of the face value of the position under the ratings-based approach, but not for a risk weight of less than 100%.

3. Use of Qualifying Rating Software Mapped to Public Rating Standards

The agencies will also allow banking organizations, particularly those with limited involvement in securitization activities, to rely on qualifying credit assessment computer programs that the rating agencies have developed to rate otherwise unrated direct credit substitutes and recourse obligations (but not residual interests) in asset securitizations.

To qualify for use by a banking organization for risk-based capital purposes, a computer program's credit assessments must correspond credibly and reliably to the rating standards of the rating agencies for traded positions in securitizations. A banking organization must demonstrate the credibility of the computer program in the financial markets, which would generally be shown by the significant use of the computer program by investors and other market participants for risk assessment purposes. A banking organization must also demonstrate the reliability of the program in assessing credit risk.

A banking organization may use a computer program for purposes of applying the ratings-based approach under this final rule only if the banking organization satisfies its primary regulator that the program results in credit assessments that credibly and reliably correspond with the ratings of traded positions by the rating agencies. The banking organization should also demonstrate to its primary regulator's satisfaction that the program was designed to apply to its particular direct credit substitute or recourse exposure and that it has properly implemented the computer program. Sophisticated banking organizations with extensive securitization activities generally should use this approach only if it is an integral part of their risk management systems and their systems fully capture the risks from the banking organizations' securitization activities.

This approach can be used to qualify a direct credit substitute or recourse obligation (but not a residual interest) for a risk weight of 100% or 200% of the face value of the position under the ratings-based approach, but not for a risk weight of less than 100%.

IV. Effective Date of the Final Rule

This final rule is effective January 1, 2002, a date that comports with the delayed effective date requirements of both the Administrative Procedure Act (APA) and the CDRI Act.[29] Any transaction covered by this final rule that is settled on or after that date is subject to the capital requirements established by the rule. Banking organizations that have entered into transactions prior to the effective date of

[29] *See* 5 U.S.C. 553(d) (APA provision prescribing 30-day delayed effective date); 12 U.S.C. 4802(b) (CDRI provision requiring that a regulation take effect on the first day of the calendar quarter following publication in final form if the regulation imposes ''reporting, disclosures or other new requirements'' on insured depository institutions.)

the final rule may elect early adoption, as of November 29, 2001, of any provision of the final rule that results in a reduced risk-based capital requirement. Conversely, banking organizations that enter into transactions prior to the effective date of this final rule that result in increased regulatory capital requirements may delay the application of this rule to those transactions until December 31, 2002.

Although the Residual Proposal indicated that the agencies intended to permit banking organizations to continue to apply existing capital rules to certain asset securitizations for up to two years after the effective date of the final rule, the agencies believe that the one year effective date should give banking organizations ample time to bring their capital requirements in line with the economic risks that they have already assumed through their securitization activities. The agencies have, through the issuance of supervisory guidance and four separate notices of proposed rulemaking, identified the risks to banking organizations from securitizations and demonstrated the agencies' concern over the management of these risks by banking organizations. These rulemakings and guidance have placed the industry on notice that, among other things, the agencies have concluded that the securitization activities of banking organizations often expose them to greater economic risk than their capital levels reflect. Therefore, this final rule requires that all transactions, whether entered into before its effective date or not, be subject to the capital requirements stated in the rule, but allows for flexibility in the time by which that must occur.

V. Miscellaneous Changes

Each of the agencies has made miscellaneous changes to its proposed regulatory text to conform its rule to the texts of the other agencies. In addition, the agencies have made revisions to existing rules to appropriately accommodate the revised treatment of recourse, direct credit substitutes and residual interests.

VI. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this final rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. *601 et seq.* The provisions of this final rule that increase capital requirements are likely to affect large national banks almost exclusively. Small national banks rarely sponsor or provide direct credit substitutes in asset securitizations. Accordingly, a regulatory flexibility analysis is not required.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board has determined that this final rule will not have a significant impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board's comparison of the applicability section of this proposal with Call Report Data on all existing banks shows that application of the proposal to small entities will be the rare exception. Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Comparison of Call Report data on FDIC-supervised banks to the items covered by the proposal that result in increased capital requirements shows that application of the proposal to small entities will be the infrequent exception.

OTS: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant impact on a substantial number of small entities. The provisions of this final rule that increase capital requirements for thrifts—the provisions on residual interests and certain direct credit substitutes (*e.g.*, financial standby letters of credit)—are unlikely to affect small savings associations. Current TFR data reveal that few small savings associations hold residual interests and that no small thrift holds residual interests in excess of 25 percent of core capital. Further, the application of the revised capital requirements to existing residual interests will not result in a change in the capital category of any small thrift. Few small savings associations issue standby letters of credit. In addition, virtually all of the standby letters of credit that are issued by small thrifts will not be subject to an increased capital requirement since these positions will continue to be eligible for lower risk weights under the alternative approaches outlines in the final rule. Accordingly, OTS concludes that a regulatory flexibility analysis is not required.

B. Paperwork Reduction Act

The agencies have determined that this final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

C. Executive Order 12866

OCC: The OCC has determined that this final rule is not a significant regulatory action for purposes of Executive Order 12866. The OCC expects that any increase in national banks' risk-based capital requirement, resulting from the treatment of residual interests largely will be offset by the ability of those banks to reduce their capital requirement in accordance with the ratings-based approach.

OTS: The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory action'' under Executive Order 12866. The final rule prescribes ratings-based and other alternative approaches that are likely to reduce the risk-based capital requirement for most recourse obligations and direct credit substitutes. The rule will, however, increase capital requirements for certain direct credit substitutes (*e.g.*, standby letters of credit) and residual interests. OTS has reviewed current TFR data to determine whether current OTS-regulated institutions hold these positions in significant amounts. These data indicate that, while these institutions hold some residual interests, most standby letters of credit issued by thrifts continue to be eligible for a lower risk weight under one of the alternative approaches outlined in the final rule. OTS has analyzed the additional cost of capital that will be incurred by thrift institutions that hold residual interests and direct credit substitutes that are subject to increased capital requirements. Based on this analysis, it has concluded that the likely increases to the industry's cost of capital will not have a significant impact on the economy, as described in the Executive Order.

D. Unfunded Mandates Reform Act of 1995

OCC: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact

statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million or more in any one year. Therefore, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this final rule will reduce inconsistencies in the agencies' risk-based capital standards and, in certain circumstances, will allow banking organizations to maintain lower amounts of capital against certain rated recourse obligations, residual interests and direct credit substitutes.

OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. As discussed in the preamble, the final rule prescribes ratings-based and other alternative approaches that are likely to reduce the risk-based capital requirement for most recourse obligations and direct credit substitutes. The rule will, however, increase capital requirements for certain direct credit substitutes (*e.g.*, standby letters of credit) and residual interests. OTS has reviewed current TFR data to determine whether current OTS-regulated institutions hold these positions in significant amounts. These data indicate that, while these institutions hold some residual interests, most standby letters of credit issued by thrifts continue to be eligible for a lower risk weight under one of the alternative approaches outlined in the final rule. OTS has analyzed the additional cost of capital that will be incurred by thrift institutions that hold residual interests and direct credit substitutes that are subject to increased capital requirements. Based on this analysis, it has concluded that the likely increases to the industry's cost of capital will not 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.

E. Plain Language

The 2000 Recourse Proposal and the Residuals Proposal sought comment on the agencies' compliance with the ''plain language'' requirement of section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809). No comments were received.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

§ 3.4 [Amended]

2. In § 3.4:

A. The undesignated paragraph is designated as paragraph (a);

B. A heading is added to newly designated paragraph (a);

C. The second and third sentences in the newly designated paragraph (a) are revised; and

D. New paragraph (b) is added to read as follows:

§ 3.4 Reservation of authority.

(a) *Deductions from capital.* * * * Similarly, the OCC may find that a particular intangible asset, deferred tax asset or credit-enhancing interest-only strip need not be deducted from Tier 1 or Tier 2 capital. Conversely, the OCC may find that a particular intangible asset, deferred tax asset, credit-enhancing interest-only strip or other Tier 1 or Tier 2 capital component has characteristics or terms that diminish its contribution to a bank's ability to absorb losses, and may require the deduction from Tier 1 or Tier 2 capital of all of the component or of a greater portion of the component than is otherwise required.

(b) *Risk weight categories.* Notwithstanding the risk categories in sections 3 and 4 of appendix A to this part, the OCC will look to the substance of the transaction and may find that the assigned risk weight for any asset or the credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on a bank and may require another risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. Similarly, if no risk weight, credit equivalent amount, or credit conversion factor is specifically assigned, the OCC may assign any risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. In making its determination, the OCC considers risks associated with the asset or off-balance sheet item as well as other relevant factors.

Appendix A to Part 3—[Amended]

3. In appendix A to Part 3, revise all references to ''financial guarantee-type standby letter of credit'' to read ''financial standby letter of credit''.

4. In section 2 of appendix A,

A. Remove the word ''and'' at the end of paragraph (c)(1)(ii);

B. Revise paragraph (c)(1)(iii)(B);

C. Add a new paragraph (c)(1)(iv);

D. Footnote 6 is revised;

E. The second sentence of paragraph (c)(2)(i) is revised;

F. Paragraph (c)(4) is redesignated as paragraph (c)(5);

G. A new paragraph (c)(4) is added.

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 2. Components of Capital

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(B) 10% of Tier 1 capital, net of goodwill and all intangible assets other than purchased credit card relationships, mortgage servicing assets and non-mortgage servicing assets; and

(iv) Credit-enhancing interest-only strips (as defined in section 4(a)(3) of this appendix A), as provided in section 2(c)(4).

* * * * *

(2) * * *[6] * * *

(i) * * * Calculation of these limitations must be based on Tier 1 capital net of goodwill and all other identifiable intangibles, other than purchased credit card relationships, mortgage servicing assets and non-mortgage servicing assets.

* * * * *

(4) *Credit-enhancing interest-only strips.* Credit-enhancing interest-only strips, whether purchased or retained, that exceed 25% of Tier 1 capital must be deducted from Tier 1 capital. Purchased and retained credit-enhancing interest-only strips, on a non-tax adjusted basis, are included in the total amount that is used for purposes of determining whether a bank exceeds its Tier 1 capital.

(i) The 25% limitation on credit-enhancing interest-only strips will be based on Tier 1 capital net of goodwill and all identifiable intangibles, other than purchased credit card relationships, mortgage servicing assets and non-mortgage servicing assets.

(ii) Banks must value each credit-enhancing interest-only strip included in Tier 1 capital at least quarterly. The quarterly determination of the current fair value of the credit-enhancing interest-only strip must include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates.

(iii) Banks may elect to deduct disallowed credit-enhancing interest-only strips on a basis that is net of any associated deferred tax liability. Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

* * * * *

4. In section 3 of appendix A:

A. Footnote 11a in paragraph (a)(3)(v) is revised;

B. Paragraph (b) introductory text is amended by adding a new sentence at its end;

C. Paragraph (b)(1)(i) and footnote 13 are removed and reserved;

D. Paragraph (b)(1)(ii) is revised;

E. Paragraph (b)(1)(iii) and footnote 14 are removed and reserved;

F. Footnote 16 in paragraph (b)(2)(i) is revised;

G. Footnote 17 in paragraph (b)(2)(ii) is revised;

H. Paragraph (c) is removed; and

I. Paragraph (d) is removed.

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(3) * * *

(v) * * *[11a]

* * * * *

(b) * * * However, direct credit substitutes, recourse obligations, and securities issued in connection with asset securitizations are treated as described in section 4 of this appendix A.

(1) * * *

(ii) Risk participations purchased in bankers' acceptances;

* * * * *

(2) * * *

(i) * * *[16] * * *

(ii) * * *[17] * * *

* * * * *

5. Section 4 is redesignated Section 5.

6. A new Section 4 is added to read as follows:

* * * * *

Section 4. Recourse, Direct Credit Substitutes and Positions in Securitizations

(a) *Definitions.* For purposes of this section 4 of this appendix A, the following definitions apply:

(1) *Credit derivative* means a contract that allows one party (the protection purchaser) to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the protection provider). The value of a credit derivative is dependent, at least in part, on the credit performance of a ''reference asset.''

(2) *Credit-enhancing interest-only strip* means an on-balance sheet asset that, in form or in substance:

(i) Represents the contractual right to receive some or all of the interest due on transferred assets; and

(ii) Exposes the bank to credit risk directly or indirectly associated with the transferred assets that exceeds its *pro rata* claim on the assets whether through subordination provisions or other credit enhancing techniques.

(3) *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate a bank to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

(i) Early-default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans (as described in section 3(a)(3)(iii) of this appendix A) for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

(ii) Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency, or a U.S. Government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

(iii) Warranties that permit the return of assets in instances of fraud,

[6] Intangible assets are defined to exclude IO strips receivable related to these mortgage and non-mortgage servicing assets. See section 1(c)(14) of this appendix A. Consequently, IO strips receivable related to mortgage and non-mortgage servicing assets are not required to be deducted under section 2(c)(2) of this appendix A. However, credit-enhancing interest-only strips as defined in section 4(a)(3) are deducted from Tier 1 capital in accordance with section 2(c)(4) of this appendix A. Any non credit-enhancing IO strips receivable are subject to a 100% risk weight under section 3(a)(4) of this appendix A.

[11a] The portion of multifamily residential property loans that is sold subject to a pro rata loss sharing arrangement may be treated by the selling bank as sold to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank. The portion of multifamily residential property loans sold subject to any loss sharing arrangement other than *pro rata* sharing of the loss shall be accorded the same treatment as any other asset sold under an agreement to repurchase or sold with recourse under section 4(b) of this appendix A.

[16] For purposes of this section 3(b)(2)(i), a ''performance-based standby letter of credit'' is any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by the account party in the performance of a non-financial or commercial obligation. Participations in performance-based standby letters of credit are treated in accordance with section 4 of this appendix A.

[17] Participations in commitments are treated in accordance with section 4 of this appendix A.

misrepresentation or incomplete documentation.

(4) *Direct credit substitute* means an arrangement in which a bank assumes, in form or in substance, credit risk associated with an on- or off-balance sheet asset or exposure that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the *pro rata* share of the bank's interest in the third-party asset. If a bank has no claim on the third-party asset, then the bank's assumption of any credit risk is a direct credit substitute. Direct credit substitutes include:

(i) Financial standby letters of credit that support financial claims on a third party that exceed a bank's *pro rata* share in the financial claim;

(ii) Guarantees, surety arrangements, credit derivatives and similar instruments backing financial claims that exceed a bank's *pro rata* share in the financial claim;

(iii) Purchased subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Credit derivative contracts under which the bank assumes more than its *pro rata* share of credit risk on a third-party asset or exposure;

(v) Loans or lines of credit that provide credit enhancement for the financial obligations of a third party;

(vi) Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section 4(a)(8)(i) and (ii) of this appendix A, are not direct credit substitutes; and

(vii) Clean-up calls on third-party assets. Clean-up calls that are 10% or less of the original pool balance and that are exercisable at the option of the bank are not direct credit substitutes.

(5) *Externally rated* means that an instrument or obligation has received a credit rating from at least one nationally recognized statistical rating organization.

(6) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

(7) *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

(8) *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(i) To repay money borrowed by, or advanced to, or for the account of, a second party (the account party); or

(ii) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(9) *Mortgage servicer cash advance* means funds that a residential mortgage servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

(i) The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

(ii) For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal amount of that loan.

(10) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

(11) *Recourse* means a bank's retention, in form or in substance, of any credit risk directly or indirectly associated with an asset it has sold that exceeds a *pro rata* share of that bank's claim on the asset. If a bank has no claim on a sold asset, then the retention of any credit risk is recourse. A recourse obligation typically arises when a bank transfers assets and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

(i) Credit-enhancing representations and warranties made on transferred assets;

(ii) Loan servicing assets retained pursuant to an agreement under which the bank will be responsible for losses associated with the loans serviced. Mortgage servicer cash advances that meet the conditions of section 4(a)(8)(i) and (ii) of this appendix A, are not recourse arrangements;

(iii) Retained subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

(iv) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

(v) Loan strips sold without contractual recourse where the maturity of the transferred portion of the loan is shorter than the maturity of the commitment under which the loan is drawn;

(vi) Credit derivatives issued that absorb more than the bank's *pro rata* share of losses from the transferred assets; and

(vii) Clean-up calls. Clean-up calls that are 10% or less of the original pool balance and that are exercisable at the option of the bank are not recourse arrangements.

(12) *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes a bank to any credit risk directly or indirectly associated with the transferred asset that exceeds a *pro rata* share of that bank's claim on the asset, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing interest-only strips, spread accounts, cash collateral accounts, retained subordinated interests (and other forms of overcollateralization) and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party.

(13) *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.* a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

(14) *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures that can be sold to investors. Securitization includes transactions that create stratified credit risk positions

whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(15) *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

(16) *Traded position* means a position retained, assumed or issued in connection with a securitization that is externally rated, where there is a reasonable expectation that, in the near future, the rating will be relied upon by:

(i) Unaffiliated investors to purchase the position; or

(ii) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan or repurchase agreement.

(b) *Credit equivalent amounts and risk weights of recourse obligations and direct credit substitutes*—(1) *Credit-equivalent amount.* Except as otherwise provided, the credit-equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit-enhanced assets for which the bank directly or indirectly retains or assumes credit risk multiplied by a 100% conversion factor.

(2) *Risk-weight factor.* To determine the bank's risk-weighted assets for off-balance sheet recourse obligations and direct credit substitutes, the credit equivalent amount is assigned to the risk category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral. For a direct credit substitute that is an on-balance sheet asset (*e.g.,* a purchased subordinated security), a bank must calculate risk-weighted assets using the amount of the direct credit substitute and the full amount of the assets it supports, *i.e.,* all the more senior positions in the structure.

(c) *Credit equivalent amount and risk weight of participations in, and syndications of, direct credit substitutes.* The credit equivalent amount for a participation interest in, or syndication of, a direct credit substitute is calculated and risk weighted as follows:

(1) In the case of a direct credit substitute in which a bank has conveyed a risk participation, the full amount of the assets that are supported by the direct credit substitute is converted to a credit equivalent amount using a 100% conversion factor. The *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is then assigned to whichever risk-weight category is lower: the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral, or the risk-weight category appropriate to the party acquiring the participation. The *pro rata* share of the credit equivalent amount that has not been participated out is assigned to the risk-weight category appropriate to the obligor after considering any associated guarantees or collateral.

(2) In the case of a direct credit substitute in which the bank has acquired a risk participation, the acquiring bank's *pro rata* share of the direct credit substitute is multiplied by the full amount of the assets that are supported by the direct credit substitute and converted using a 100% credit conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(3) In the case of a direct credit substitute that takes the form of a syndication where each bank or participating entity is obligated only for its *pro rata* share of the risk and there is no recourse to the originating entity, each bank's credit equivalent amount will be calculated by multiplying only its *pro rata* share of the assets supported by the direct credit substitute by a 100% conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(d) *Externally rated positions: credit-equivalent amounts and risk weights.*—(1) *Traded positions.* With respect to a recourse obligation, direct credit substitute, residual interest (other than a credit-enhancing interest-only strip) or asset- or mortgage-backed security that is a ''traded position'' and that has received an external rating on a long-term position that is one grade below investment grade or better or a short-term position that is investment grade, the bank may multiply the face amount of the position by the appropriate risk weight, determined in accordance with Tables B or C of this Appendix A.[24] If a traded position receives more than one external rating, the lowest single rating will apply.

TABLE B

Long-term rating category	Examples	Risk weight (In percent)
Highest or second highest investment grade	AAA, AA	20
Third highest investment grade	A	50
Lowest investment grade	BBB	100
One category below investment grade	BB	200

TABLE C

Short-term rating category	Examples	Risk weight (In percent)
Highest investment grade	A–1, P–1	20
Second highest investment grade	A–2, P–2	50
Lowest investment grade	A–3, P–3	100

[24] Stripped mortgage-backed securities or other similar instruments, such as interest-only or principal-only strips, that are not credit enhancing must be assigned to the 100% risk category.

(2) *Non-traded positions.* A recourse obligation, direct credit substitute, residual interest (but not a credit-enhancing interest-only strip) or asset- or mortgage-backed security extended in connection with a securitization that is not a ''traded position'' may be assigned a risk weight in accordance with section 4(d)(1) of this appendix A if:

(i) It has been externally rated by more than one NRSRO;

(ii) It has received an external rating on a long-term position that is one category below investment grade or better or a short-term position that is investment grade by all NRSROs providing a rating;

(iii) The ratings are publicly available; and

(iv) The ratings are based on the same criteria used to rate traded positions.

If the ratings are different, the lowest rating will determine the risk category to which the recourse obligation, residual interest or direct credit substitute will be assigned.

(e) *Senior positions not externally rated.* For a recourse obligation, direct credit substitute, residual interest or asset- or mortgage-backed security that is not externally rated but is senior or preferred in all features to a traded position (including collateralization and maturity), a bank may apply a risk weight to the face amount of the senior position in accordance with section 4(d)(1) of this appendix A, based upon the traded position, subject to any current or prospective supervisory guidance and the bank satisfying the OCC that this treatment is appropriate. This section will apply only if the traded position provides substantive credit support to the unrated position until the unrated position matures.

(f) *Residual Interests*—(1) *Concentration limit on credit-enhancing interest-only strips.* In addition to the capital requirement provided by section 4(f)(2) of this appendix A, a bank must deduct from Tier 1 capital all credit-enhancing interest-only strips in excess of 25 percent of Tier 1 capital in accordance with section 2(c)(2)(iv) of this appendix A.

(2) *Credit-enhancing interest-only strip capital requirement.* After applying the concentration limit to credit-enhancing interest-only strips in accordance with section (f)(1), a bank must maintain risk-based capital for a credit-enhancing interest-only strip equal to the remaining amount of the credit-enhancing interest-only strip (net of any existing associated deferred tax liability), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred credit-enhancing interest-only strip will be treated as if the credit-enhancing interest-only strip was retained by the bank and not transferred.

(3) *Other residual interests capital requirement.* Except as provided in sections (d) or (e) of this section, a bank must maintain risk-based capital for a residual interest (excluding a credit-enhancing interest-only strip) equal to the face amount of the residual interest that is retained on the balance sheet (net of any existing associated deferred tax liability), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred residual interest will be treated as if the residual interest was retained by the bank and not transferred.

(4) *Residual interests and other recourse obligations.* Where the aggregate capital requirement for residual interests (including credit-enhancing interest-only strips) and recourse obligations arising from the same transfer of assets exceed the full risk-based capital requirement for those assets, a bank must maintain risk-based capital equal to the greater of the risk-based capital requirement for the residual interest as calculated under sections 4(f)(1) through (3) of this appendix A or the full risk-based capital requirement for the assets transferred.

(g) *Positions that are not rated by an NRSRO.* A position (but not a residual interest) extended in connection with a securitization and that is not rated by an NRSRO may be risk-weighted based on the bank's determination of the credit rating of the position, as specified in Table D of this appendix A, multiplied by the face amount of the position. In order to qualify for this treatment, the bank's system for determining the credit rating of the position must meet one of the three alternative standards set out in section 4(g)(1)through (3) of this appendix A.

TABLE D

Rating category	Examples	Risk weight (In percent)
Investment grade	BBB, or better	100
One category below investment grade	BB	200

(1) *Internal risk rating used for asset-backed programs.* A direct credit substitute (but not a purchased credit-enhancing interest-only strip) is assumed by a bank in connection with an asset-backed commercial paper program sponsored by the bank and the bank is able to demonstrate to the satisfaction of the OCC, prior to relying upon its use, that the bank's internal credit risk rating system is adequate. Adequate internal credit risk rating systems usually contain the following criteria:

(i) The internal credit risk system is an integral part of the bank's risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(ii) Internal credit ratings are linked to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(iii) The bank's internal credit risk system must separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(iv) The bank's internal credit risk system must identify gradations of risk among ''pass'' assets and other risk positions;

(v) The bank must have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

(vi) The bank must have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(vii) An internal audit procedure should periodically verify that internal risk ratings are assigned in accordance with the bank's established criteria.

(viii) The bank must monitor the performance of the internal credit risk ratings assigned to nonrated, nontraded direct credit substitutes over time to determine the appropriateness of the initial credit risk rating assignment and adjust individual credit risk ratings, or the overall internal credit risk ratings system, as needed; and

(ix) The internal credit risk system must make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

(2) *Program Ratings.* A direct credit substitute or recourse obligation (but not a residual interest) is assumed or retained by a bank in connection with a structured finance program and a NRSRO has reviewed the terms of the program and stated a rating for positions associated with the program. If the program has options for different combinations of assets, standards, internal credit enhancements and other relevant factors, and the NRSRO specifies ranges of rating categories to them, the bank may apply the rating category applicable to the option that corresponds to the bank's position. In order to rely on a program rating, the bank must demonstrate to the OCC's satisfaction that the credit risk rating assigned to the program meets the same standards generally used by NRSROs for rating traded positions. The bank must also demonstrate to the OCC's satisfaction that the criteria underlying the NRSRO's assignment of ratings for the program are satisfied for the particular position. If a bank participates in a securitization sponsored by another party, the OCC may authorize the bank to use this approach based on a program rating obtained by the sponsor of the program.

(3) *Computer Program.* The bank is using an acceptable credit assessment computer program to determine the rating of a direct credit substitute or recourse obligation (but not a residual interest) extended in connection with a structured finance program. A NRSRO must have developed the computer program and the bank must demonstrate to the OCC's satisfaction that ratings under the program correspond credibly and reliably with the rating of traded positions.

(h) *Limitations on risk-based capital requirements*—(1) *Low-level exposure rule.* If the maximum contractual exposure to loss retained or assumed by a bank is less than the effective risk-based capital requirement, as determined in accordance with section 4(b) of this appendix A, for the asset supported by the bank's position, the risk based capital required under this appendix A is limited to the bank's contractual exposure, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply when a bank provides credit enhancement beyond any contractual obligation to support assets that it has sold.

(2) *Related on-balance sheet assets.* If an asset is included in the calculation of the risk-based capital requirement under this section 4 of this appendix A and also appears as an asset on a bank's balance sheet, the asset is risk-weighted only under this section 4 of this appendix A, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, both the on-balance sheet servicing assets and the related recourse obligations or direct credit substitutes must both be separately risk weighted and incorporated into the risk-based capital calculation.

(i) *Alternative Capital Calculation for Small Business Obligations.* (1) *Definitions.* For purposes of this section 4(i):

(i) *Qualified bank* means a bank that:

(A) Is well capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 4(i), or

(B) Is adequately capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 4(i) and has received written permission from the appropriate district office of the OCC to apply the capital treatment described in this section 4(i).

(ii) *Recourse* has the meaning given to such term under generally accepted accounting principles.

(iii) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR part 121 pursuant to 15 U.S.C. 632.

(2) *Capital and reserve requirements.* Notwithstanding the risk-based capital treatment outlined in section 2(c)(4) and any other subsection (other than subsection (i)) of this section 4, with respect to a transfer of a small business loan or a lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified bank may elect to apply the following treatment:

(i) The bank establishes and maintains a non-capital reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the bank under the recourse arrangement; and

(ii) For purposes of calculating the bank's risk-based capital ratio, the bank includes only the face amount of its recourse in its risk-weighted assets.

(3) *Limit on aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified bank with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the bank as described in section 4(i)(2) of this appendix A may not exceed 15 percent of the bank's total capital after adjustments and deductions, unless the OCC specifies a greater amount by order.

(4) *Bank that ceases to be qualified or that exceeds aggregate limit.* If a bank ceases to be a qualified bank or exceeds the aggregate limit in section 4(i)(3) of this appendix A, the bank may continue to apply the capital treatment described in section 4(i)(2) of this appendix A to transfers of small business loans and leases of personal property that occurred when the bank was qualified and did not exceed the limit.

(5) *Prompt Corrective Action not affected.* (i) A bank shall compute its capital without regard to this section 4(i) for purposes of prompt corrective action (12 U.S.C. 1831o and 12 CFR part 6) unless the bank is an adequately or well capitalized bank (without applying the capital treatment described in this section 4(i)) and, after applying the capital treatment described in this section 4(i), the bank would be well capitalized.

(ii) A bank shall compute its capital without regard to this section 4(i) for purposes of 12 U.S.C. 1831o(g) regardless of the bank's capital level.

* * * * *

4. In appendix A, Table 2, ''100 Percent Conversion Factor,'' Item 1 is revised to read as follows:

* * * * *

TABLE 2—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

	100 Percent Conversion Factor
1. [Reserved]	

* * * * *

Dated: October 23, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208:

A. The three introductory paragraphs of section II, the first five paragraphs of section II.A.1, and the first seven paragraphs of section II.A.2. are revised and footnote 5 is removed and reserved;

B. In section II.B., a new paragraph (i)(c) is added, section II.B.1.b. and footnote 14 are revised, new sections II.B.1.c. through II.B.1.g. are added, and section II.B.4. is revised;

C. In section III.A., a new undesignated fifth paragraph is added at the end of the section;

D. In section III.B., paragraph 3 is revised and footnote 23 is removed, and in paragraph 4, footnote 24 is removed;

E. In section III.C., paragraphs 1 through 3, footnotes 25 through 39 are redesignated as footnotes 23 through 37, and paragraph 4 is revised;

F. In section III.D., the introductory paragraph and paragraph 1 are revised;

G. In sections III.D. and III.E., footnote 46 is removed and footnotes 47 through 51 are redesignated as footnotes 44 through 48;

H. In section IV.B., footnote 52 is removed; and

I. Attachment II is revised.

Appendix A To Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

A bank's qualifying total capital consists of two types of capital components: ''core capital elements'' (comprising tier 1 capital) and ''supplementary capital elements'' (comprising tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

The Federal Reserve will, on a case-by-case basis, determine whether and, if so, how much of any instrument that does not fit wholly within the terms of one of the capital categories set forth below or that does not have an ability to absorb losses commensurate with the capital treatment otherwise specified below will be counted as an element of tier 1 or tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the instrument to instruments explicitly treated in the guidelines, the ability of the instrument to absorb losses while the bank operates as a going concern, the maturity and redemption features of the instrument, and other relevant terms and factors. To qualify as an element of tier 1 or tier 2 capital, a capital instrument may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on a bank's overall capital structure. Consequently, a bank considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the institution's capital base.[4]

[4] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve.

A. * * *

1. *Core capital elements (tier 1 capital).* The tier 1 component of a bank's qualifying capital must represent at least 50 percent of qualifying total capital and may consist of the following items that are defined as core capital elements:

(i) Common stockholders' equity;

(ii) Qualifying noncumulative perpetual preferred stock (including related surplus); and

(iii) Minority interest in the equity accounts of consolidated subsidiaries.

Tier 1 capital is generally defined as the sum of core capital elements[5] less goodwill, other intangible assets, and interest-only strips receivables that are required to be deducted in accordance with section II.B.1. of this appendix.

* * * * *

2. *Supplementary capital elements (tier 2 capital).* The tier 2 component of a bank's qualifying capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below);

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below);

(iii) Hybrid capital instruments (as defined below), and mandatory convertible debt securities;

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below);

(v) Unrealized holding gains on equity securities (subject to limitations discussed in section II.A.2.e. of this appendix).

The maximum amount of tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of tier 1 capital (net of goodwill, other intangible assets, and interest-only strips receivables that are required to be deducted in accordance with section II.B.1. of this appendix).

* * * * *

B. * * *

(i) * * *

(c) Certain credit-enhancing interest-only strips receivables—deducted from the sum of core capital elements in

[5] [Reserved]

accordance with sections II.B.1.c. through e. of this appendix.

* * * * *

1. *Goodwill, other intangible assets, and residual interests.* * * *

b. *Other intangible assets.* i. All servicing assets, including servicing assets on assets other than mortgages (i.e., nonmortgage servicing assets), are included in this appendix as identifiable intangible assets. The only types of identifiable intangible assets that may be included in, that is, not deducted from, a bank's capital are readily marketable mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships. The total amount of these assets that may be included in capital is subject to the limitations described below in sections II.B.1.d. and e. of this appendix.

ii. The treatment of identifiable intangible assets set forth in this section generally will be used in the calculation of a bank's capital ratios for supervisory and applications purposes. However, in making an overall assessment of a bank's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of a bank's capital, together with the quality and value of its tangible and intangible assets.

c. *Credit-enhancing interest-only strips receivables (I/Os).* i. Credit-enhancing I/Os are on-balance sheet assets that, in form or in substance, represent the contractual right to receive some or all of the interest due on transferred assets and expose the bank to credit risk directly or indirectly associated with transferred assets that exceeds a *pro rata* share of the bank's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Such I/Os, whether purchased or retained, including other similar ''spread'' assets, may be included in, that is, not deducted from, a bank's capital subject to the limitations described below in sections II.B.1.d. and e. of this appendix.

ii. Both purchased and retained credit-enhancing I/Os, on a non-tax adjusted basis, are included in the total amount that is used for purposes of determining whether a bank exceeds the tier 1 limitation described below in this section. In determining whether an I/O or other types of spread assets serve as a credit enhancement, the Federal Reserve will look to the economic substance of the transaction.

d. *Fair value limitation.* The amount of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that a bank may include in capital shall be the lesser of 90 percent of their fair value, as determined in accordance with section II.B.1.f. of this appendix, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions in the commercial bank Consolidated Reports of Condition and Income (Call Reports). The amount of I/Os that a bank may include in capital shall be its fair value. If both the application of the limits on mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships and the adjustment of the balance sheet amount for these assets would result in an amount being deducted from capital, the bank would deduct only the greater of the two amounts from its core capital elements in determining tier 1 capital.

e. *Tier 1 capital limitation.* i. The total amount of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that may be included in capital, in the aggregate, cannot exceed 100 percent of tier 1 capital. The aggregate of nonmortgage servicing assets and purchased credit card relationships are subject to a separate sublimit of 25 percent of tier 1 capital. In addition, the total amount of credit-enhancing I/Os (both purchased and retained) that may be included in capital cannot exceed 25 percent of tier 1 capital.[14]

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), and any disallowed deferred-tax assets, regardless of the date acquired.

iii. Banks may elect to deduct disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, and disallowed credit-enhancing I/Os (both purchased and retained) on a basis that is net of any associated deferred tax liability. Deferred tax liabilities netted in this manner cannot also be netted against deferred-tax assets when determining the amount of deferred-tax assets that are dependent upon future taxable income.

f. *Valuation.* Banks must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the examination process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank's intangible assets or credit-enhancing I/Os.

g. *Growing organizations.* Consistent with long-standing Board policy, banks experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets or credit-enhancing I/Os.

* * * * *

4. *Deferred-tax assets.* a. The amount of deferred-tax assets that is dependent upon future taxable income, net of the valuation allowance for deferred-tax assets, that may be included in, that is, not deducted from, a bank's capital may not exceed the lesser of:

i. The amount of these deferred-tax assets that the bank is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[20] or

[14] Amounts of servicing assets, purchased credit card relationships, and credit-enhancing I/Os (both retained and purchased) in excess of these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from a bank's core capital elements in determining tier 1 capital. However, identifiable intangible assets (other than mortgage servicing assets and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

[20] To determine the amount of expected deferred-tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating loss carry-forwards to be used during that year or the amount of existing temporary differences a bank expects to reverse within the year. Such projections should include

Continued

ii. 10 percent of tier 1 capital.

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a bank's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, and any disallowed deferred-tax assets. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences, but, for banks that have a parent, this may not exceed the amount the bank could reasonably expect its parent to refund.

* * * * *

III. * * *

A. * * *

The Federal Reserve will, on a case-by-case basis, determine the appropriate risk weight for any asset or credit equivalent amount of an off-balance sheet item that does not fit wholly within one of the risk weight categories set forth below or that imposes risks on a bank that are incommensurate with the risk weight otherwise specified below for the asset or off-balance sheet item. In addition, the Federal Reserve will, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within one of the credit conversion factors set forth below or that imposes risks on a bank that are incommensurate with the credit conversion factors otherwise specified below for the off-balance sheet item. In making such a determination, the Federal Reserve will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

* * * * *

B. * * *

3. *Recourse obligations, direct credit substitutes, residual interests, and asset- and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations and structured financings are treated as described below. The term ''asset securitizations'' or ''securitizations'' in this rule includes structured financings, as well as asset securitization transactions.

a. *Definitions*—i. *Credit derivative* means a contract that allows one party (the ''protection purchaser'') to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the ''protection provider'') The value of a credit derivative is dependent, at least in part, on the credit performance of the ''reference asset.''

ii. *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

1. Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

2. Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

3. Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

iii. *Direct credit substitute* means an arrangement in which a bank *assumes*, in form or in substance, credit risk associated with an on-or off-balance sheet credit exposure that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the *pro rata* share of the bank's interest in the third-party asset. If the bank has no claim on the third-party asset, then the bank's assumption of *any* credit risk with respect to the third party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

1. Financial standby letters of credit that support financial claims on a third party that exceed a bank's *pro rata* share of losses in the financial claim;

2. Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a bank's *pro rata* share in the financial claim;

3. Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

4. Credit derivative contracts under which the bank assumes more than its *pro rata* share of credit risk on a third party exposure;

5. Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

6. Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not direct credit substitutes; and

7. Clean-up calls on third party assets are direct credit substittues. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not direct credit substitutes.

iv. *Externally rated* means that an instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

v. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

vi. *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

vii. *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

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the estimated effect of tax-planning strategies that the organization expects to implement to realize net operating losses or tax-credit carry-forwards that would otherwise expire during the year. Institutions do not have to prepare a new 12-month projection each quarter. Rather, on interim report dates, institutions may use the future-taxable income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

1. To repay money borrowed by, or advanced to, or for the account of, a second party (the account party), or

2. To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

viii. *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

1. The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

2. For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal balance of that loan.

ix. *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

x. *Recourse* means the retention, by a bank, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred and sold that exceeds a *pro rata* share of the bank's claim on the asset. If a bank has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank transfers assets and retains an explicit obligation to repurchase the assets or absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

1. Credit-enhancing representations and warranties made on the transferred assets;

2. Loan servicing assets retained pursuant to an agreement under which the bank will be responsible for credit losses associated with the loans being serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not recourse arrangements;

3. Retained subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

4. Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

5. Loan strips sold without contractual recourse where the maturity of the transferred loan is shorter than the maturity of the commitment under which the loan is drawn;

6. Credit derivatives issued that absorb more than the bank's *pro rata* share of losses from the transferred assets; and

7. Clean-up calls at inception that are greater than 10 percent of the balance of the original pool of transferred loans. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank are not recourse arrangements.

xi. *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes the bank to credit risk directly or indirectly associated with the transferred assets that exceeds a *pro rata* share of the bank's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing I/Os are residual interests for purposes of this appendix.

xii. *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.*, a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

xiii. *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

xiv. *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

xv. *Traded position* means a position that is externally rated and is retained, assumed, or issued in connection with an asset securitization, where there is a reasonable expectation that, in the near future, the rating will be relied upon by unaffiliated investors to purchase the position; or an unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

b. *Credit equivalent amounts and risk weight of recourse obligations and direct credit substitutes.* i. *Credit equivalent amount.* Except as otherwise provided in sections III.B.3.c. through f. and III.B.5. of this appendix, the credit equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit-enhanced assets for which the bank directly or indirectly retains or assumes credit risk multiplied by a 100 percent conversion factor.

ii. *Risk-weight factor.* To determine the bank's risk-weight factor for off-balance sheet recourse obligations and direct credit substitutes, the credit equivalent amount is assigned to the risk category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral. For a direct credit substitute that is an on-balance sheet asset (*e.g.*, a purchased subordinated security), a bank must calculate risk-weighted assets using the amount of the direct credit substitute and the full amount of the assets it supports, *i.e.*, all the more senior positions in the structure. The treatment of direct credit substitutes that have been syndicated or in which risk participations have been conveyed or acquired is set forth in section III.D.1 of this appendix.

c. *Externally-rated positions: credit equivalent amounts and risk weights of recourse obligations, direct credit substitutes, residual interests, and asset- and mortgage-backed securities (including asset-backed commercial paper).* i. *Traded positions.* With respect to a recourse obligation, direct credit substitute, residual interest (other than a credit-enhancing I/O strip) or asset-

and mortgage-backed security (including asset-backed commercial paper) that is a traded position and that has received an external rating on a long-term position that is one grade below investment grade or better or a short-term rating that is investment grade, the bank may multiply the face amount of the position by the appropriate risk weight, determined in accordance with the tables below. Stripped mortgage-backed securities and other similar instruments, such as interest-only or principal-only strips that are not credit enhancements, must be assigned to the 100 percent risk category. If a traded position has received more than one external rating, the lowest single rating will apply.

Long-term rating category	Examples	Risk weight (In percent)
Highest or second highest investment grade	AAA, AA	20
Third highest investment grade	A	50
Lowest investment grade	BBB	100
One category below investment grade	BB	200

Short-term rating	Examples	Risk weight (In percent)
Highest investment grade	A–1, P–1	20
Second highest investment grade	A–2, P–2	50
Lowest investment grade	A–3, P–3	100

ii. *Non-traded positions.* A recourse obligation, direct credit substitute, or residual interest (but not a credit-enhancing I/O strip) extended in connection with a securitization that is not a traded position may be assigned a risk weight in accordance with section III.B.3.c.i. of this appendix if:

1. It has been externally rated by more than one NRSRO;

2. It has received an external rating on a long-term position that is one grade below investment grade or better or on a short-term position that is investment grade by all NRSROs providing a rating;

3. The ratings are publicly available; and

4. The ratings are based on the same criteria used to rate traded positions.

If the ratings are different, the lowest rating will determine the risk category to which the recourse obligation, direct credit substitute, or residual interest will be assigned.

d. *Senior positions not externally rated.* For a recourse obligation, direct credit substitute, residual interest, or asset- or mortgage-backed security that is not externally rated but is senior or preferred in all features to a traded position (including collateralization and maturity), a bank may apply a risk weight to the face amount of the senior position in accordance with section III.B.3.c.i. of this appendix, based on the traded position, subject to any current or prospective supervisory guidance and the bank satisfying the Federal Reserve that this treatment is appropriate. This section will apply only if the traded subordinated position provides substantive credit support to the unrated position until the unrated position matures.

e. *Capital requirement for residual interests*—i. *Capital requirement for credit-enhancing I/O strips.* After applying the concentration limit to credit-enhancing I/O strips (both purchased and retained) in accordance with sections II.B.2.c. through e. of this appendix, a bank must maintain risk-based capital for a credit-enhancing I/O strip (both purchased and retained), regardless of the external rating on that position, equal to the remaining amount of the credit-enhancing I/O strip (net of any existing associated deferred tax liability), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred credit-enhancing I/O strip will be treated as if the credit-enhancing I/O strip was retained by the bank and not transferred.

ii. *Capital requirement for other residual interests. 1.* If a residual interest does not meet the requirements of sections III.B.3.c. or d. of this appendix, a bank must maintain risk-based capital equal to the remaining amount of the residual interest that is retained on the balance sheet (net of any existing associated deferred tax liability), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred residual interest will be treated as if the residual interest was retained by the bank and not transferred.

2. Where the aggregate capital requirement for residual interests and other recourse obligation in connection with the same transfer of assets exceed the full risk-based capital requirement for those assets, a bank must maintain risk-based capital equal to the greater of the risk-based capital requirement for the residual interest as calculated under section III.B.3.e.ii.*1* of this appendix or the full risk-based capital requirement for the assets transferred.

f. *Positions that are not rated by an NRSRO.* A position (but not a residual interest) maintained in connection with a securitization and that is not rated by a NRSRO may be risk-weighted based on the bank's determination of the credit rating of the position, as specified in the table below, multiplied by the face amount of the position. In order to obtain this treatment, the bank's system for determining the credit rating of the position must meet one of the three alternative standards set out in sections III.B.3.f.i. through III.B.3.f.iii. of this appendix.

Rating category	Examples	Risk weight (In percent)
Highest or second highest investment grade	AAA,AA	100
Third highet investment grade	A	100
Lowest investment grade	BBB	100
One category below investment grade	BB	200

i. *Internal risk rating used for asset-backed programs.* A direct credit substitute (other than a purchased credit-enhancing I/O) is assumed in connection with an asset-backed commercial paper program sponsored by the bank and the bank is able to demonstrate to the satisfaction of the Federal Reserve, prior to relying upon its use, that the bank's internal credit risk rating system is adequate. Adequate internal credit risk rating systems usually contain the following criteria:

1. The internal credit risk system is an integral part of the bank's risk management system, which explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

2. Internal credit ratings are linked to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

3. The bank's internal credit risk system must separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

4. The bank's internal credit risk system must identify gradations of risk among ''pass'' assets and other risk positions;

5. The bank must have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

6. The bank must have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

7. The bank must have an internal audit procedure that periodically verifies that the internal credit risk ratings are assigned in accordance with the established criteria;

8. The bank must monitor the performance of the internal credit risk ratings assigned to nonrated, nontraded direct credit substitutes over time to determine the appropriateness of the initial credit risk rating assignment and adjust individual credit risk ratings, or the overall internal credit risk ratings system, as needed; and

9. The internal credit risk system must make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

ii. *Program Ratings.* A direct credit substitute or recourse obligation (other than a residual interest) is assumed or retained in connection with a structured finance program and a NRSRO has reviewed the terms of the program and stated a rating for positions associated with the program. If the program has options for different combinations of assets, standards, internal credit enhancements and other relevant factors, and the NRSRO specifies ranges of rating categories to them, the bank may apply the rating category that corresponds to the bank's position. In order to rely on a program rating, the bank must demonstrate to the Federal Reserve's satisfaction that the credit risk rating assigned to the program meets the same standards generally used by NRSROs for rating traded positions. The bank must also demonstrate to the Federal Reserve's satisfaction that the criteria underlying the NRSRO's assignment of ratings for the program are satisfied for the particular position. If a bank participates in a securitization sponsored by another party, the Federal Reserve may authorize the bank to use this approach based on a programmatic rating obtained by the sponsor of the program.

iii. *Computer Program.* The bank is using an acceptable credit assessment computer program to determine the rating of a direct credit substitute or recourse obligation (but not residual interest) issued in connection with a structured finance program. A NRSRO must have developed the computer program, and the bank must demonstrate to the Federal Reserve's satisfaction that ratings under the program correspond credibly and reliably with the rating of traded positions.

g. *Limitations on risk-based capital requirements*—i. *Low-level exposure.* If the maximum contractual exposure to loss retained or assumed by a bank in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual exposure, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply when a bank provides credit enhancement beyond any contractual obligation to support assets it has sold.

ii. *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as on-balance sheet assets.

iii. *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to section III.B.3. of this appendix also appears as a balance sheet asset, the balance sheet asset is not included in a bank's risk-weighted assets to the extent the value of the balance sheet asset is already included in the off-balance sheet credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes must be separately risk-weighted and incorporated into the risk-based capital calculation.

* * * * *

C. * * *

4. *Category 4: 100 percent.* a. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

b. This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[36] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims;[37] investments in fixed assets,

[36] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by the bank.

[37] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-

Continued

premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; all stripped mortgage-backed securities and similar instruments; and commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight).

c. Also included in this category are industrial-development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

d. The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

* * * * *

D. * * *

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section III.D.1. of this appendix. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[38] Attachment IV to this appendix sets forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100-percent conversion factor.* a. Except as otherwise provided in section III.B.3. of this appendix, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section III.B.3. of this appendix.

b. Sale and repurchase agreements and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[39] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

c. Securities lent by a bank are treated in one of two ways, depending upon whether the lender is at risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, or, if applicable, to any collateral delivered to the lending bank, or the independent custodian acting on the lending bank's behalf. Where a bank is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the bank, the transaction is deemed to be collateralized by cash on deposit in the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

d. In the case of direct credit substitutes in which a risk participation[40] has been conveyed, the full amount of the assets that are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[41] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category.[42]

e. In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring bank's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

f. In the case of direct credit substitutes that take the form of a syndication where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank will only include its *pro rata* share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[43]

* * * * *

term claims guaranteed by U.S. depository institutions and foreign banks.

[38] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

[39] Forward forward deposits accepted are treated as interest rate contracts.

[40] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[41] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[42] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[43] For example, if a bank has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the bank's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk weighted assets.

ATTACHMENT II.—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS*

[Using the year-end 1992 standard]

Components	Minimum requirements
Core Capital (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; banks should avoid undue reliance on preferred stock in tier 1.
Minority interest in equity accounts of consolidated subsidiaries	Banks should avoid using minority interests to subsidiaries introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, and credit-enhancing interest-only strips required to be deducted from capital [1]	
Supplementary Capital (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[2]
Perpetual preferred stock	No limit within tier 2.
Hybrid capital instruments and equity contract notes	No limit within tier 2.
Subordinated debt and intermediate-term preferred stocks (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1,[2] amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; banks encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
Deductions (from sum of tier 1 and tier 2):	
Investment in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital.[3]
Reciprocal holdings of banking organizations' capital securities	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after a formal rulemaking.
Total Capital (tier 1 + tier 2— deductions)	Must equal or exceed 8% or weighted-risk assets.

[1] Requirements for the deduction of other intangible assets and residual interests are set forth in section II.B.1. of this appendix.
[2] Amount in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

* * * * *

3. In Appendix B to part 208, section II.b is revised to read as follows:

Appendix B To Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

II. * * *

b. A bank's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital as set forth in the risk-based capital guidelines contained in appendix A of this part will be used.[2] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Reports), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of tier 1 capital; amounts of nonmortgage servicing assets, purchased credit card relationships that, in the aggregate, are in excess of 25 percent of tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of appendix A of this part.[3]

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1843(k), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225:

A. The three introductory paragraphs of section II, the first six paragraphs of section II.A.1, and the first seven paragraphs of section II.A.2. are revised and footnote 6 is removed and reserved;

B. In section II.B., a new paragraph (i)(c) is added, section II.B.1.b. and footnote 15 are revised, new sections II.B.1.c. through II.B.1.g. are added, and section II.B.4. is revised;

C. In section III.A., a new undesignated fourth paragraph is added at the end of the section;

D. In section III.B., paragraph 3 is revised and footnote 26 is removed, and in paragraph 4, footnote 27 is removed;

[2] Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of tier 1 capital; amounts of credit-enhancing interest-only strips in excess of 25 percent of tier 1 capital; all other identifiable intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[3] Deductions from tier 1 capital and other adjustments are discussed more fully in section II.B. of appendix A of this part.

E. In section III.C., paragraphs 1 through 4, footnotes 28 through 42 are redesignated as footnotes 26 through 40, and paragraph 4 is revised;

F. In section III.D., the introductory paragraph and paragraph 1 are revised;

G. In sections III.D. and III.E., footnotes 50 and 52 are removed, footnote 51 is redesignated as footnote 47, footnotes 53 through 55 are redesignated as footnotes 48 through 50;

H. In sections IV.A. and IV.B., footnote 57 is removed and footnote 56 is redesignated as footnote 51; and

I. Attachment II is revised.

Appendix A To Part 225—Capital Adequacy Guidelines For Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

An institution's qualifying total capital consists of two types of capital components: ''core capital elements'' (comprising tier 1 capital) and ''supplementary capital elements'' (comprising tier 2 capital). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below and are set forth in Attachment II.

The Federal Reserve will, on a case-by-case basis, determine whether, and if so how much of, any instrument that does not fit wholly within the terms of one of the capital categories set forth below or that does not have an ability to absorb losses commensurate with the capital treatment otherwise specified below will be counted as an element of tier 1 or tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the instrument to instruments explicitly treated in the guidelines, the ability of the instrument to absorb losses while the institution operates as a going concern, the maturity and redemption features of the instrument, and other relevant terms and factors. To qualify as an element of tier 1 or tier 2 capital, a capital instrument may not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

Redemptions of permanent equity or other capital instruments before stated maturity could have a significant impact on an organization's overall capital structure. Consequently, an organization considering such a step should consult with the Federal Reserve before redeeming any equity or debt capital instrument (prior to maturity) if such redemption could have a material effect on the level or composition of the organization's capital base.[5]

* * * * *

A. * * *

1. *Core capital elements (tier 1 capital).* The tier 1 component of an institution's qualifying capital must represent at least 50 percent of qualifying total capital and may consist of the following items that are defined as core capital elements:

(i) Common stockholders' equity;

(ii) Qualifying noncumulative perpetual preferred stock (including related surplus);

(iii) Qualifying cumulative perpetual preferred stock (including related surplus), subject to certain limitations described below; and

(iv) Minority interest in the equity accounts of consolidated subsidiaries.

Tier 1 capital is generally defined as the sum of core capital elements[6] less goodwill, other intangible assets, and interest-only strips receivables that are required to be deducted in accordance with section II.B.1. of this appendix.

* * * * *

2. *Supplementary capital elements (tier 2 capital).* The tier 2 component of an institution's qualifying capital may consist of the following items that are defined as supplementary capital elements:

(i) Allowance for loan and lease losses (subject to limitations discussed below);

(ii) Perpetual preferred stock and related surplus (subject to conditions discussed below);

(iii) Hybrid capital instruments (as defined below), perpetual debt, and mandatory convertible debt securities;

(iv) Term subordinated debt and intermediate-term preferred stock, including related surplus (subject to limitations discussed below);

(v) Unrealized holding gains on equity securities (subject to limitations discussed in section II.A.2.e. of this appendix).

The maximum amount of tier 2 capital that may be included in an institution's qualifying total capital is limited to 100 percent of tier 1 capital (net of goodwill, other intangible assets, and interest-only strips receivables that are required to be deducted in accordance with section II.B.1. of this appendix).

* * * * *

B. * * *

(i) * * *

(c) Certain credit-enhancing interest-only strips receivables—deducted from the sum of core capital elements in accordance with sections II.B.1.c. through e. of this appendix.

* * * * *

1. *Goodwill, other intangible assets, and residual interests.* * * *

b. *Other intangible assets.* i. All servicing assets, including servicing assets on assets other than mortgages (i.e., nonmortgage servicing assets), are included in this appendix as identifiable intangible assets. The only types of identifiable intangible assets that may be included in, that is, not deducted from, an organization's capital are readily marketable mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships. The total amount of these assets that may be included in capital is subject to the limitations described below in sections II.B.1.d. and e. of this appendix.

ii. The treatment of identifiable intangible assets set forth in this section generally will be used in the calculation of a bank holding company's capital ratios for supervisory and applications purposes. However, in making an overall assessment of a bank holding company's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of an organization's capital, together with the quality and value of its tangible and intangible assets.

c. *Credit-enhancing interest-only strips receivables (I/Os)* i. Credit-enhancing I/Os are on-balance sheet assets that, in form or in substance, represent a contractual right to receive some or all of the interest due on transferred assets and expose the bank holding company to credit risk directly or indirectly associated with transferred assets that exceeds a *pro rata* share of the bank holding company's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Such I/Os, whether purchased or retained, including other similar ''spread'' assets, may be included in, that is, not deducted from, a bank holding company's capital subject to the limitations described below in sections II.B.1.d. and e. of this appendix.

ii. Both purchased and retained credit-enhancing I/Os, on a non-tax adjusted basis, are included in the total

[5] Consultation would not ordinarily be necessary if an instrument were redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument and the organization's capital position is considered fully adequate by the Federal Reserve. In the case of limited-life tier 2 instruments, consultation would generally be obviated if the new security is of equal or greater maturity than the one it replaces.

[6] [Reserved]

amount that is used for purposes of determining whether a bank holding company exceeds the tier 1 limitation described below in this section. In determining whether an I/O or other types of spread assets serve as a credit enhancement, the Federal Reserve will look to the economic substance of the transaction.

d. *Fair value limitation.* The amount of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that a bank holding company may include in capital shall be the lesser of 90 percent of their fair value, as determined in accordance with section II.B.1.f. of this appendix, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions to the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C Report). The amount of credit-enhancing I/Os that a bank holding company may include in capital shall be its fair value. If both the application of the limits on mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships and the adjustment of the balance sheet amount for these assets would result in an amount being deducted from capital, the bank holding company would deduct only the greater of the two amounts from its core capital elements in determining tier 1 capital.

e. *Tier 1 capital limitation.* i. The total amount of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that may be included in capital, in the aggregate, cannot exceed 100 percent of tier 1 capital. Nonmortgage servicing assets and purchased credit card relationships are subject, in the aggregate, to a separate sublimit of 25 percent of tier 1 capital. In addition, the total amount of credit-enhancing I/Os (both purchased and retained) that may be included in capital cannot exceed 25 percent of tier 1 capital.[15]

ii. For purposes of calculating these limitations on mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os, tier 1 capital is defined as the sum of core capital elements, net of goodwill, and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os (both purchased and retained), and any disallowed deferred-tax assets, regardless of the date acquired.

iii. Bank holding companies may elect to deduct disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, and disallowed credit-enhancing I/Os (both purchased and retained) on a basis that is net of any associated deferred tax liability. Deferred tax liabilities netted in this manner cannot also be netted against deferred-tax assets when determining the amount of deferred-tax assets that are dependent upon future taxable income.

f. *Valuation.* Bank holding companies must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the inspection process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank holding company's intangible assets or credit-enhancing I/Os.

g. *Growing organizations.* Consistent with long-standing Board policy, banking organizations experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets or credit-enhancing I/Os.

4. *Deferred-tax assets.* a. The amount of deferred-tax assets that is dependent upon future taxable income, net of the valuation allowance for deferred-tax assets, that may be included in, that is, not deducted from, a bank holding company's capital may not exceed the lesser of:

i. The amount of these deferred-tax assets that the bank holding company is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[23] or

ii. 10 percent of tier 1 capital.

b. The reported amount of deferred-tax assets, net of any valuation allowance for deferred-tax assets, in excess of the lesser of these two amounts is to be deducted from a banking organization's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and net of all identifiable intangible assets other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, prior to the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing I/Os, and any disallowed deferred-tax assets. There generally is no limit in tier 1 capital on the amount of deferred-tax assets that can be realized from taxes paid in prior carry-back years or from future reversals of existing taxable temporary differences.

* * * * *

III. * * *

A. * * *

The Federal Reserve will, on a case-by-case basis, determine the appropriate risk weight for any asset or credit equivalent amount of an off-balance sheet item that does not fit wholly within the terms of one of the risk weight categories set forth below or that imposes risks on a bank holding company that are incommensurate with the risk weight otherwise specified below for the asset or off-balance sheet item. In addition, the Federal Reserve will, on a case-by-case basis, determine the appropriate credit conversion factor

[15] Amounts of servicing assets, purchased credit card relationships, and credit-enhancing I/Os (both retained and purchased) in excess of these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from a bank holding company's core capital elements in determining tier 1 capital. However, identifiable intangible assets (other than mortgage servicing assets and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

[23] To determine the amount of expected deferred-tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating loss carry-forwards to be used during that year or the amount of existing temporary differences a bank holding company expects to reverse within the year. Such projections should include the estimated effect of tax-planning strategies that the organization expects to implement to realize net operating losses or tax-credit carry-forwards that would otherwise expire during the year. Institutions do not have to prepare a new 12-month projection each quarter. Rather, on interim report dates, institutions may use the future-taxable income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

for any off-balance sheet item that does not fit wholly within the terms of one of the credit conversion factors set forth below or that imposes risks on a banking organization that are incommensurate with the credit conversion factors otherwise specified below for the off-balance sheet item. In making such a determination, the Federal Reserve will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in the guidelines, as well as other relevant factors.

* * * * *

B. * * *

3. *Recourse obligations, direct credit substitutes, residual interests, and asset- and mortgage-backed securities.* Direct credit substitutes, assets transferred with recourse, and securities issued in connection with asset securitizations and structured financings are treated as described below. The term ''asset securitizations'' or ''securitizations'' in this rule includes structured financings, as well as asset securitization transactions.

a. *Definitions*—i. *Credit derivative* means a contract that allows one party (the ''protection purchaser'') to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the ''protection provider''). The value of a credit derivative is dependent, at least in part, on the credit performance of the ''reference asset.''

ii. *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate the bank holding company to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

1. Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50 percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

2. Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a government-sponsored enterprise, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

3. Warranties that permit the return of assets in instances of misrepresentation, fraud or incomplete documentation.

iii. *Direct credit substitute* means an arrangement in which a bank holding company *assumes,* in form or in substance, credit risk associated with an on- or off-balance sheet credit exposure that was not previously owned by the bank holding company (third-party asset) and the risk assumed by the bank holding company exceeds the *pro rata* share of the bank holding company's interest in the third-party asset. If the bank holding company has no claim on the third-party asset, then the bank holding company's assumption of *any* credit risk with respect to the third-party asset is a direct credit substitute. Direct credit substitutes include, but are not limited to:

1. Financial standby letters of credit that support financial claims on a third party that exceed a bank holding company's *pro rata* share of losses in the financial claim;

2. Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a bank holding company's *pro rata* share in the financial claim;

3. Purchased subordinated interests or securities that absorb more than their *pro rata* share of losses from the underlying assets;

4. Credit derivative contracts under which the bank holding company assumes more than its *pro rata* share of credit risk on a third party exposure;

5. Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

6. Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not direct credit substitutes; and

7. Clean-up calls on third party assets are direct credit substitutes. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank holding company are not direct credit substitutes.

iv. *Externally rated* means that an instrument or obligation has received a credit rating from a nationally-recognized statistical rating organization.

v. *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

vi. *Financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

vii. *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

1. To repay money borrowed by, or advanced to, or for the account of, a second party (the account party), or

2. To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

viii. *Mortgage servicer cash advance* means funds that a residential mortgage loan servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

1. The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

2. For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal balance of that loan.

ix. *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

x. *Recourse* means the retention, by a bank holding company, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred and sold that exceeds a *pro rata* share of the banking organization's claim on the asset. If a banking organization has no claim on a transferred asset, then the retention of any risk of credit loss is recourse. A recourse obligation typically arises when a bank holding company transfers assets and retains an explicit obligation

to repurchase the assets or absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a bank holding company provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

1. Credit-enhancing representations and warranties made on the transferred assets;

2. Loan servicing assets retained pursuant to an agreement under which the bank holding company will be responsible for credit losses associated with the loans being serviced. Mortgage servicer cash advances that meet the conditions of section III.B.3.a.viii. of this appendix are not recourse arrangements;

3. Retained subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

4. Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

5. Loan strips sold without contractual recourse where the maturity of the transferred loan is shorter than the maturity of the commitment under which the loan is drawn;

6. Credit derivatives issued that absorb more than the bank holding company's *pro rata* share of losses from the transferred assets; and

7. Clean-up calls at inception that are greater than 10 percent of the balance of the original pool of transferred loans. Clean-up calls that are 10 percent or less of the original pool balance that are exercisable at the option of the bank holding company are not recourse arrangements.

xi. *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes the bank holding company to credit risk directly or indirectly associated with the transferred assets that exceeds a *pro rata* share of the bank holding company's claim on the assets, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing I/Os, spread accounts, cash collateral accounts, retained subordinated interests, other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank holding company to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing I/Os are residual interests for purposes of this appendix.

xii. *Risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (e.g., a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

xiii. *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

xiv. *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and credit enhancement provided to the program.

xv. *Traded position* means a position that is externally rated, and is retained, assumed, or issued in connection with an asset securitization, where there is a reasonable expectation that, in the near future, the rating will be relied upon by unaffiliated investors to purchase the position; or an unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

b. *Credit equivalent amounts and risk weight of recourse obligations and direct credit substitutes.* i. *Credit equivalent amount.* Except as otherwise provided in sections III.B.3.c. through f. and III.B.5. of this appendix, the credit-equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit-enhanced assets for which the bank holding company directly or indirectly retains or assumes credit risk multiplied by a 100 percent conversion factor.

ii. *Risk-weight factor.* To determine the bank holding company's risk-weight factor for off-balance sheet recourse obligations and direct credit substitutes, the credit equivalent amount is assigned to the risk category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral. For a direct credit substitute that is an on-balance sheet asset (*e.g.,* a purchased subordinated security), a bank holding company must calculate risk-weighted assets using the amount of the direct credit substitute and the full amount of the assets it supports, *i.e.,* all the more senior positions in the structure. The treatment of direct credit substitutes that have been syndicated or in which risk participations have been conveyed or acquired is set forth in section III.D.1 of this appendix.

c. *Externally-rated positions: credit-equivalent amounts and risk weights of recourse obligations, direct credit substitutes, residual interests, and asset- and mortgage-backed securities (including asset-backed commercial paper)*—i. *Traded positions.* With respect to a recourse obligation, direct credit substitute, residual interest (other than a credit-enhancing I/Ostrip) or asset- and mortgage-backed security (including asset-backed commercial paper) that is a traded position and that has received an external rating on a long-term position that is one grade below investment grade or better or a short-term rating that is investment grade, the bank holding company may multiply the face amount of the position by the appropriate risk weight, determined in accordance with the tables below. Stripped mortgage-backed securities and other similar instruments, such as interest-only or principal-only strips that are not credit enhancements, must be assigned to the 100 percent risk category. If a traded position has received more than one external rating, the lowest single rating will apply.

Long-term rating category	Examples	Risk weight (In percent)
Highest or second highest investment grade	AAA, AA	20
Third highest investment grade	A	50
Lowest investment grade	BBB	100
One category below investment grade	BB	200

Short-term rating	Examples	Risk weight (In percent)
Highest investment grade	A–1, P–1	20
Second highest investment grade	A–2, P–2	50
Lowest investment grade	A–3, P–3	100

ii. *Non-traded positions.* A recourse obligation, direct credit substitute, or residual interest (but not a credit-enhancing I/O strip) extended in connection with a securitization that is not a traded position may be assigned a risk weight in accordance with section III.B.3.c.i. of this appendix if:

1. It has been externally rated by more than one NRSRO;

2. It has received an external rating on a long-term position that is one grade below investment grade or better or on a short-term position that is investment grade by all NRSROs providing a rating;

3. The ratings are publicly available; and

4. The ratings are based on the same criteria used to rate traded positions.

If the ratings are different, the lowest rating will determine the risk category to which the recourse obligation, direct credit substitute, or residual interest will be assigned.

d. *Senior positions not externally rated.* For a recourse obligation, direct credit substitute, residual interest, or asset-or mortgage-backed security that is not externally rated but is senior or preferred in all features to a traded position (including collateralization and maturity), a bank holding company may apply a risk weight to the face amount of the senior position in accordance with section III.B.3.c.i. of this appendix, based on the traded position, subject to any current or prospective supervisory guidance and the bank holding company satisfying the Federal Reserve that this treatment is appropriate. This section will apply only if the traded subordinated position provides substantive credit support to the unrated position until the unrated position matures.

e. *Capital requirement for residual interests*—i. *Capital requirement for credit-enhancing I/O strips.* After applying the concentration limit to credit-enhancing I/O strips (both purchased and retained) in accordance with sections II.B.2.c. through e. of this appendix, a bank holding company must maintain risk-based capital for a credit-enhancing I/O strip (both purchased and retained), regardless of the external rating on that position, equal to the remaining amount of the credit-enhancing I/O (net of any existing associated deferred tax liability), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred credit-enhancing I/O strip will be treated as if the credit-enhancing I/O strip was retained by the bank holding company and not transferred.

ii. *Capital requirement for other residual interests. 1.* If a residual interest does not meet the requirements of sections III.B.3.c. or d. of this appendix, a bank holding must maintain risk-based capital equal to the remaining amount of the residual interest that is retained on the balance sheet (net of any existing associated deferred tax liability), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred residual interest will be treated as if the residual interest was retained by the bank holding company and not transferred.

2. Where the aggregate capital requirement for residual interests and other recourse obligations in connection with the same transfer of assets exceed the full risk-based capital requirement for those assets, a bank holding company must maintain risk-based capital equal to the greater of the risk-based capital requirement for the residual interest as calculated under section III.B.3.e.ii.*1.* of this appendix or the full risk-based capital requirement for the assets transferred.

f. *Positions that are not rated by an NRSRO.* A position (but not a residual interest) maintained in connection with a securitization and that is not rated by a NRSRO may be risk-weighted based on the bank holding company's determination of the credit rating of the position, as specified in the table below, multiplied by the face amount of the position. In order to obtain this treatment, the bank holding company's system for determining the credit rating of the position must meet one of the three alternative standards set out in sections III.B.3.f.i. through III.B.3.f.iii. of this appendix.

Rating category	Examples	Risk weight (In percent)
Highest or second highest investment grade	AAA, AA	100
Third highest investment grade	A	100
Lowest investment grade	BBB	100
One category below investment grade	BB	200

i. *Internal risk rating used for asset-backed programs.* A direct credit substitute (other than a purchased credit-enhancing I/O) is assumed in connection with an asset-backed commercial paper program sponsored by the bank holding company and the bank holding company is able to demonstrate to the satisfaction of the Federal Reserve, prior to relying upon its use, that the bank holding company's internal credit risk rating system is adequate. Adequate internal credit risk rating systems usually contain the following criteria:

1. The internal credit risk system is an integral part of the bank holding company's risk management system, which explicitly incorporates the full range of risks arising from a bank holding company's participation in securitization activities;

2. Internal credit ratings are linked to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

3. The bank holding company's internal credit risk system must separately consider the risk associated with the underlying loans or borrowers,

and the risk associated with the structure of a particular securitization transaction;

4. The bank holding company's internal credit risk system must identify gradations of risk among ''pass'' assets and other risk positions;

5. The bank holding company must have clear, explicit criteria that are used to classify assets into each internal risk grade, including subjective factors;

6. The bank holding company must have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

7. The bank holding company must have an internal audit procedure that periodically verifies that the internal credit risk ratings are assigned in accordance with the established criteria;

8. The bank holding company must monitor the performance of the internal credit risk ratings assigned to nonrated, nontraded direct credit substitutes over time to determine the appropriateness of the initial credit risk rating assignment and adjust individual credit risk ratings, or the overall internal credit risk ratings system, as needed; and

9. The internal credit risk system must make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

ii. *Program Ratings.* A direct credit substitute or recourse obligation (other than a residual interest) is assumed or retained in connection with a structured finance program and a NRSRO has reviewed the terms of the program and stated a rating for positions associated with the program. If the program has options for different combinations of assets, standards, internal credit enhancements and other relevant factors, and the NRSRO specifies ranges of rating categories to them, the bank holding company may apply the rating category that corresponds to the bank holding company's position. In order to rely on a program rating, the bank holding company must demonstrate to the Federal Reserve's satisfaction that the credit risk rating assigned to the program meets the same standards generally used by NRSROs for rating traded positions. The bank holding company must also demonstrate to the Federal Reserve's satisfaction that the criteria underlying the NRSRO's assignment of ratings for the program are satisfied for the particular position. If a bank holding company participates in a securitization sponsored by another party, the Federal Reserve may authorize the bank holding company to use this approach based on a programmatic rating obtained by the sponsor of the program.

iii. *Computer Program.* The bank holding company is using an acceptable credit assessment computer program to determine the rating of a direct credit substitute or recourse obligation (but not residual interest) issued in connection with a structured finance program. A NRSRO must have developed the computer program, and the bank holding company must demonstrate to the Federal Reserve's satisfaction that ratings under the program correspond credibly and reliably with the rating of traded positions.

g. *Limitations on risk-based capital requirements*—i. *Low-level exposure.* If the maximum contractual exposure to loss retained or assumed by a bank holding company in connection with a recourse obligation or a direct credit substitute is less than the effective risk-based capital requirement for the enhanced assets, the risk-based capital requirement is limited to the maximum contractual exposure, less any liability account established in accordance with generally accepted accounting principles. This limitation does not apply when a bank holding company provides credit enhancement beyond any contractual obligation to support assets it has sold.

ii. *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holding company holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the organization continued to hold these loans as on-balance sheet assets.

iii. *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute subject to section III.B.3. of this appendix also appears as a balance sheet asset, the balance sheet asset is not included in an organization's risk-weighted assets to the extent the value of the balance sheet asset is already included in the off-balance sheet credit equivalent amount for the recourse obligation or direct credit substitute, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, both the on-balance sheet assets and the related recourse obligations and direct credit substitutes are incorporated into the risk-based capital calculation.

* * * * *

C. * * *

4. *Category 4: 100 percent.* a. All assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

b. This category includes long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk.[39] This category includes all claims on foreign and domestic private-sector obligors not included in the categories above (including loans to nondepository financial institutions and bank holding companies); claims on commercial firms owned by the public sector; customer liabilities to the organization on acceptances outstanding involving standard risk claims;[40] investments in fixed assets, premises, and other real estate owned; common and preferred stock of corporations, including stock acquired for debts previously contracted; all stripped mortgage-backed securities and similar instruments; and commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight).

c. Also included in this category are industrial-development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group.

[39] Such assets include all nonlocal currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by subsidiary depository institutions.

[40] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

d. The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

* * * * *

D. * * *

The face amount of an off-balance sheet item is generally incorporated into risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except for direct credit substitutes and recourse obligations as discussed in section III.D.1. of this appendix. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[41] Attachment IV to this appendix A sets forth the conversion factors for various types of off-balance sheet items.

1. *Items with a 100 percent conversion factor.* a. Except as otherwise provided in section III.B.3. of this appendix, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section III.B.3. of this appendix.

b. Sale and repurchase agreements and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[42] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

c. Securities lent by a banking organization are treated in one of two ways, depending upon whether the lender is at risk of loss. If a banking organization, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a banking organization lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, or, if applicable, to any collateral delivered to the lending organization, or the independent custodian acting on the lending organization's behalf. Where a banking organization is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the banking organization, the transaction is deemed to be collateralized by cash on deposit in a subsidiary depository institution for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

d. In the case of direct credit substitutes in which a risk participation[43] has been conveyed, the full amount of the assets that are supported, in whole or in part, by the credit enhancement are converted to a credit equivalent amount at 100 percent. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after considering any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation.[44] Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the 20 percent risk category.[45]

e. In the case of direct credit substitutes in which a risk participation has been acquired, the acquiring banking organization's percentage share of the direct credit substitute is multiplied by the full amount of the assets that are supported, in whole or in part, by the credit enhancement and converted to a credit equivalent amount at 100 percent. The credit equivalent amount of an acquisition of a risk participation in a direct credit substitute is assigned to the risk category appropriate to the account party obligor or, if relevant, the nature of the collateral or guarantees.

f. In the case of direct credit substitutes that take the form of a syndication where each banking organization is obligated only for its pro rata share of the risk and there is no recourse to the originating banking organization, each banking organization will only include its pro rata share of the assets supported, in whole or in part, by the direct credit substitute in its risk-based capital calculation.[46]

* * * * *

ATTACHMENT II.—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR BANK HOLDING COMPANIES*

[Using the year-end 1992 standard]

Components	Minimum requirements
Core Capital (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
Common stockholders' equity	No limit.
Qualifying noncumulative perpetual preferred stock	No limit; banks should avoid undue reliance on preferred stock in tier 1.

[41] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

[42] Forward forward deposits accepted are treated as interest rate contracts.

[43] That is, a participation in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[44] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[45] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[46] For example, if a banking organization has a 10 percent share of a $10 syndicated direct credit substitute that provides credit support to a $100 loan, then the banking organization's $1 *pro rata* share in the enhancement means that a $10 *pro rata* share of the loan is included in risk weighted assets.

ATTACHMENT II.—SUMMARY OF DEFINITION OF QUALIFYING CAPITAL FOR BANK HOLDING COMPANIES*—Continued

[Using the year-end 1992 standard]

Components	Minimum requirements
Qualifying cumulative preferred stock	Limited to 25% of the sum of common stock, qualifying perpetual preferred stock, and minority interests.
Minority interest in equity accounts of consolidated subsidiaries.	Banks should avoid using minority interests to subsidiaries introduce elements not otherwise qualifying for tier 1 capital.
Less: Goodwill, other intangible assets, and credit-enhancing interest-only strips required to be deducted from capital[1]	
Supplementary Capital (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[2]
Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[2]
Perpetual preferred stock	No limit within tier 2.
Hybrid instruments, perpetual debt and mandatory convertible securities..	No limit within tier 2.
Subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Subordinated debt and intermediate-term preferred stock are limited to 50% of tier 1,[2] amortized for capital purposes as they approach maturity.
Revaluation reserves (equity and building)	Not included; banks encouraged to disclose; may be evaluated on a case-by-case basis for international comparisons; and taken into account in making an overall assessment of capital.
Deductions (from sum of tier 1 and tier 2):	
Investment in unconsolidated subsidiaries	As a general rule, one-half of the aggregate investments will be deducted from tier 1 capital and one-half from tier 2 capital.[3]
Reciprocal holdings of banking organizations' capital securities.	
Other deductions (such as other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after a formal rulemaking.
Total Capital (tier 1 + tier 2 − deductions)	Must equal or exceed 8% or weighted-risk assets.

[1] Requirements for the deduction of other intangible assets and residual interests are set forth in section II.B.1. of this appendix.
[2] Amount in excess of limitations are permitted but do not qualify as capital.
[3] A proportionately greater amount may be deducted from tier 1 capital, if the risks associated with the subsidiary so warrant.
* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components for qualifying capital.

* * * * *

3. In Appendix D to part 225, section II.b. is revised to read as follows:

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. A banking organization's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital as set forth in the risk-based capital guidelines contained in appendix A of this part will be used.[3] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships, that, in the aggregate, are in excess of 100 percent of tier 1 capital; amounts of nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of tier 1 capital; the amounts of credit-enhancing interest-only strips that are in excess of 25 percent of tier 1 capital; all other identifiable intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4. of appendix A of this part.[4]

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: November 8, 2001.

Margaret McCloskey Shanks,

Assistant Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat.

[3] Tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of tier 1 capital.) In addition, as a general matter, tier 1 capital excludes goodwill; amounts of mortage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of tier 1 capital; amounts of credit-enhancing interest-only strips that are in excess of 25 percent of tier 1capital; all other identifiable intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[4] Deductions from tier 1 capital and other adjustments are discussed more fully in section II.B. of appendix A of this part.

2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In § 325.2:

A. Redesignate paragraphs (g) through (x) as paragraphs (i) through (z);

B. Add new paragraphs (g) and (h);

C. Amend newly designated paragraphs (v) and (x) to read as follows:

§ 325.2 Definitions.

* * * * *

(g)(1) *Credit-enhancing interest-only strip* means an on-balance sheet asset that, in form or in substance:

(i) Represents the contractual right to receive some or all of the interest due on transferred assets; and

(ii) Exposes the bank to credit risk directly or indirectly associated with the transferred assets that exceeds a pro rata share of the bank's claim on the assets, whether through subordination provisions or other credit enhancement techniques.

(2) *Reservation of authority.* In determining whether a particular interest cash flow functions, directly or indirectly, as a credit-enhancing interest-only strip, the FDIC will consider the economic substance of the transaction. The FDIC, through the Director of Supervision, or other designated FDIC official reserves the right to identify other interest cash flows or related assets as credit-enhancing interest-only strips.

(h) *Face amount* means the notional principal, or face value, amount of an off-balance sheet item; the amortized cost of an asset not held for trading purposes; and the fair value of a trading asset.

* * * * *

(v) *Tier 1 capital or core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f), minus deferred tax assets in excess of the limit set forth in § 325.5(g), minus identified losses (to the extent that Tier 1 capital would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the insured depository institution's books), and minus investments in financial subsidiaries subject to 12 CFR part 362, subpart E.

* * * * *

(x) *Total assets* means the average of total assets required to be included in a banking institution's ''Reports of Condition and Income'' (Call Report) or, for savings associations, the consolidated total assets required to be included in the ''Thrift Financial Report,'' as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c) and 325.5(d) of this part), minus intangible assets (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)), minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f)), minus deferred tax assets in excess of the limit set forth in § 325.5(g), and minus assets classified loss and any other assets that are deducted in determining Tier 1 capital. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

3. In § 325.3, amend paragraph (b)(1) by changing ''CAMEL'' to ''CAMELS.''

4. In § 325.5, revise paragraphs (f) and (g)(2) to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(f) *Treatment of mortgage servicing assets, purchased credit card relationships, nonmortgage servicing assets, and credit-enhancing interest-only strips.* For purposes of determining Tier 1 capital under this part, mortgage servicing assets, purchased credit card relationships, nonmortgage servicing assets, and credit-enhancing interest-only strips will be deducted from assets and from common stockholders' equity to the extent that these items do not meet the conditions, limitations, and restrictions described in this section. Banks may elect to deduct disallowed servicing assets and disallowed credit-enhancing interest-only strips on a basis that is net of a proportional amount of any associated deferred tax liability recorded on the balance sheet. Any deferred tax liability netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income and calculating the maximum allowable amount of these assets under paragraph (g) of this section.

(1) *Valuation.* The fair value of mortgage servicing assets, purchased credit card relationships, nonmortgage servicing assets, and credit-enhancing interest-only strips shall be estimated at least quarterly. The quarterly fair value estimate shall include adjustments for any significant changes in the original valuation assumptions, including changes in prepayment estimates or attrition rates. The FDIC in its discretion may require independent fair value estimates on a case-by-case basis where it is deemed appropriate for safety and soundness purposes.

(2) *Fair value limitation.* For purposes of calculating Tier 1 capital under this part (but not for financial statement purposes), the balance sheet assets for mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets will each be reduced to an amount equal to the lesser of:

(i) 90 percent of the fair value of these assets, determined in accordance with paragraph (f)(1) of this section; or

(ii) 100 percent of the remaining unamortized book value of these assets (net of any related valuation allowances), determined in accordance with the instructions for the preparation of the ''Reports of Income and Condition'' (Call Reports).

(3) *Tier 1 capital limitations.* (i)The maximum allowable amount of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets in the aggregate, will be limited to the lesser of:

(A) 100 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, and any disallowed deferred tax assets; or

(B) The sum of the amounts of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, determined in accordance with paragraph (f)(2) of this section.

(ii) The maximum allowable amount of credit-enhancing interest-only strips, whether purchased or retained, will be limited to the lesser of:

(A) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, and any disallowed deferred tax assets; or

(B) The sum of the face amounts of all credit-enhancing interest-only strips.

(4) *Tier 1 capital sublimit.* In addition to the aggregate limitation on mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets set forth in paragraph (f)(3) of this section, a sublimit will apply to purchased credit card relationships and nonmortgage servicing assets. The maximum allowable amount of the aggregate of purchased credit card relationships and nonmortgage servicing assets will be limited to the lesser of:

(i) 25 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, any disallowed credit-enhancing interest-only strips, and any disallowed deferred tax assets; or

(ii) The sum of the amounts of purchased credit card relationships and nonmortgage servicing assets determined in accordance with paragraph (f)(2) of this section.

(g) * * *

(2) *Tier 1 capital limitations.* (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year; or

(B) 10 percent of the amount of Tier 1 capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed nonmortgage servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips and any disallowed deferred tax assets.

(ii) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, in excess of this limitation will be deducted from assets and from equity capital for purposes of determining Tier 1 capital under this part. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally would not be deducted from assets and from equity capital. However, notwithstanding the first three sentences in this paragraph, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a member of a consolidated group (for tax purposes) may include in Tier 1 capital may not exceed the amount which the member could reasonably expect to have refunded by its parent.

* * * * *

§ 325.103 [Amended]

5. In § 325.103, amend paragraph (b) by revising all references to ''CAMEL'' to read ''CAMELS'.

6. In appendix A to part 325:

A. In the introductory section, second undesignated paragraph remove the last sentence and in the third undesignated paragraph revise the first sentence;

B. In section I, revise paragraph I.A.l. and redesignate footnotes 5 through 10 as footnotes 4 through 9;

C. In section II:

i. Amend paragraph II.A. by designating the first two undesignated paragraphs as l. and 2., respectively, adding a new paragraph 3., and redesignating footnote 11 as footnote 10;

ii. Amend paragraph II.B. by redesignating footnotes 12 through 13 as footnotes 11 through 12, revising paragraph 5, and removing paragraph 6;

iii. Amend paragraph II.C. by redesignating footnotes 15 through 31 as footnotes 16 through 32; under ''*Category 2–20 Percent Risk Weight*'' designating the three undesignated paragraphs as paragraphs a. through c., respectively, and adding a new paragraph d.; under ''*Category 3—50 Percent Risk Weight*'' removing the third undesignated paragraph, designating the three remaining paragraphs as a. through c., respectively, revising newly designated footnote 30, and adding a new paragraph d; revising ''*Category 4—100 Percent Risk Weight*''; and adding a new paragraph entitled ''*Category 5—200 Percent Risk Weight*'';

iv. Amend paragraph II.D. by revising the undesignated introductory paragraph and paragraph II.D.1.; removing footnote 38 and redesignating footnotes 39 through 42 as footnotes 37 through 40.

D. Revise section III;

E. Revise Table I;

F. In Table II:

i. Amend Category 2—20 Percent Risk Weight, by removing paragraph (11), redesignating paragraph (12) as paragraph (11), and adding new paragraph (12);

ii. Amend Category 3—50 Percent Risk Weight, by revising paragraph (3);

iii. Amend Category 4—100 Percent Risk Weight, by revising paragraph (9) and adding a new paragraph (10); and

iv. Following the paragraph titled Category 4—100 Percent Risk Weight, add a new paragraph titled Category 5—200 Percent Risk Weight;

G. Amend Table III by removing references to footnote 1 each time they appear and revising paragraphs (1) through (3) under ''*100 Percent Conversion Factor*''.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

The framework set forth in this statement of policy consists of (1) a definition of capital for risk-based capital purposes, and (2) a system for calculating risk-weighted assets by assigning assets and off balance sheet items to broad risk categories. * * *

I. * * *

A. * * *

1. *Core capital elements (Tier 1) consists of:*

i. Common stockholders' equity capital (includes common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values);

ii. Noncumulative perpetual preferred stock,[2] including any related surplus; and

iii. Minority interests in the equity capital accounts of consolidated subsidiaries.

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. Core (Tier 1) capital is defined as the sum of core capital elements minus all intangible assets (other than mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships eligible for inclusion in core capital pursuant to § 325.5(f)),[3] minus credit-enhancing interest-only strips that are not eligible for inclusion in core capital pursuant to § 325.5(f)), and minus any disallowed deferred tax assets.

Although nonvoting common stock, noncumulative perpetual preferred

[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

stock, and minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although credit-enhancing interest-only strips and intangible assets in the form of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships are generally recognized for risk-based capital purposes, the deduction of part or all of the credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships may be required if the carrying amounts of these assets are excessive in relation to their market value or the level of the bank's capital accounts. Credit-enhancing interest-only strips, mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships and deferred tax assets that do not meet the conditions, limitations and restrictions described in § 325.5(f) and (g) of this part will not be recognized for risk-based capital purposes.

* * * * *

II. * * *

A. * * *

3. The Director of the Division of Supervision may, on a case-by-case basis, determine the appropriate risk weight for any asset or credit equivalent amount that does not fit wholly within one of the risk categories set forth in this Appendix A or that imposes risks on a bank that are not commensurate with the risk weight otherwise specified in this Appendix A for the asset or credit equivalent amount. In addition, the Director of the Division of Supervision may, on a case-by-case basis, determine the appropriate credit conversion factor for any off-balance sheet item that does not fit wholly within one of the credit conversion factors set forth in this Appendix A or that imposes risks on a bank that are not commensurate with the credit conversion factor otherwise specified in this Appendix A for the off-balance sheet item. In making such a determination, the Director of the Division of Supervision will consider the similarity of the asset or off-balance sheet item to assets or off-balance sheet items explicitly treated in sections II.B and II.C of this appendix A, as well as other relevant factors.

B. * * *

5. *Recourse, Direct Credit Substitutes, Residual Interests and Mortgage- and Asset-Backed Securities.* For purposes of this section II.B.5 of this appendix A, the following definitions will apply.

(a) *Definitions.* (1) *Credit derivative* means a contract that allows one party (the protection purchaser) to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the protection provider). The value of a credit derivative is dependent, at least in part, on the credit performance of a ''reference asset.''

(2) *Credit-enhancing interest-only strip* is defined in § 325.2(g).

(3) *Credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate a bank to protect investors from losses arising from credit risk in the assets transferred or the loans serviced. Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of another party or from an insufficiency in the value of the collateral. Credit-enhancing representations and warranties do not include:

(i) Early-default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans (as described in section II.C, Category 3–50 Percent Risk Weight, of this appendix A) for a period of 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

(ii) Premium refund clauses covering assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency, or a U.S. Government-sponsored agency, provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

(iii) Warranties that permit the return of assets in instances of fraud, misrepresentation, or incomplete documentation.

(4) *Direct credit substitute* means an arrangement in which a bank assumes, in form or in substance, credit risk directly or indirectly associated with an on-or off-balance sheet asset or exposure that was not previously owned by the bank (third-party asset) and the risk assumed by the bank exceeds the *pro rata* share of the bank's interest in the third-party asset. If the bank has no claim on the asset, then the bank's assumption of any credit risk is a direct credit substitute. Direct credit substitutes include, but are not limited to:

(i) Financial standby letters of credit, which includes any letter of credit or similar arrangement, however named or described, that support financial claims on a third party that exceed a bank's *pro rata* share in the financial claim;

(ii) Guarantees, surety arrangements, credit derivatives, and irrevocable guarantee-type instruments backing financial claims such as outstanding securities, loans, or other financial claims, or that back off-balance-sheet items against which risk-based capital must be maintained;

(iii) Purchased subordinated interests or securities that absorb more than their *pro rata* share of credit losses from the underlying assets. Purchased subordinated interests that are credit-enhancing interest-only strips are subject to the higher capital charge specified in section II.B.5.(f) of this Appendix A;

(iv) Entering into a credit derivative contract under which the bank assumes more than its *pro rata* share of credit risk on a third-party asset or exposure;

(v) Loans or lines of credit that provide credit enhancement for the financial obligations of an account party;

(vi) Purchased loan servicing assets if the servicer:

(A) Is responsible for credit losses associated with the loans being serviced,

(B) Is responsible for making mortgage servicer cash advances (unless the advances are not direct credit substitutes because they meet the conditions specified in paragraph B.5(a)(9) of this appendix A), or

(C) Makes or assumes credit-enhancing representations and warranties on the serviced loans; and

(vii) Clean-up calls on third party assets. Clean-up calls that are exercisable at the option of the bank (as servicer or as an affiliate of the servicer) when the pool balance is 10 percent or less of the original pool balance are not direct credit substitutes.

(5) *Externally rated* means, with respect to an instrument or obligation, that an instrument or obligation has received a credit rating from at least one

nationally recognized statistical rating organization.

(6) *Face amount* is defined in § 325.2(h).

(7) *Financial asset* means cash, evidence of an ownership interest in an entity, or a contract that conveys to a second entity a contractual right:

(i) To receive cash or another financial instrument from a first entity; or

(ii) To exchange other financial instruments on potentially favorable terms with the first entity.

(8) *Financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(i) To repay money borrowed by, or advanced to, or for the account of, a second party (the account party); or

(ii) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

(9) *Mortgage servicer cash advance* means funds that a residential mortgage servicer advances to ensure an uninterrupted flow of payments or the timely collection of residential mortgage loans, including disbursements made to cover foreclosure costs or other expenses arising from a mortgage loan to facilitate its timely collection. A mortgage servicer cash advance is not a recourse obligation or a direct credit substitute if:

(i) The mortgage servicer is entitled to full reimbursement or, for any one residential mortgage loan, nonreimbursable advances are contractually limited to an insignificant amount of the outstanding principal on that loan, and

(ii) The servicer's entitlement to reimbursement is not subordinated.

(10) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers (17 CFR 240.15c3–1).

(11) *Recourse* means an arrangement in which a bank retains, in form or in substance, any credit risk directly or indirectly associated with an asset it has sold (in accordance with generally accepted accounting principles) that exceeds a pro rata share of the bank's claim on the asset. If a bank has no claim on an asset it has sold, then the retention of any credit risk is recourse. A recourse obligation typically arises when an institution transfers assets in a sale and retains an obligation to repurchase the assets or absorb losses due to a default of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may exist implicitly where a bank provides credit enhancement beyond any contractual obligation to support assets it has sold. The following are examples of recourse arrangements:

(i) Credit-enhancing representations and warranties made on the transferred assets;

(ii) Loan servicing assets retained pursuant to an agreement under which the bank:

(A) Is responsible for losses associated with the loans serviced,

(B) Is responsible for making mortgage servicer cash advances (unless the advances are not a recourse obligation because they meet the conditions of paragraph B.5(a)(9) of this appendix A), or

(C) Makes credit-enhancing representations and warranties on the serviced loans;

(iii) Retained subordinated interests that absorb more than their pro rata share of losses from the underlying assets;

(iv) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

(v) Loan strips sold without contractual recourse where the maturity of the transferred portion of the loan is shorter than the maturity of the commitment under which the loan is drawn;

(vi) Credit derivative contracts under which the bank retains more than its pro rata share of credit risk on transferred assets; and

(vii) Clean-up calls. Clean-up calls that are exercisable at the option of the bank (as servicer or as an affiliate of the servicer) when the pool balance is 10 percent or less of the original pool balance, are not recourse.

(12) *Residual interest* means any on-balance sheet asset that represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise, and that exposes a bank to credit risk directly or indirectly associated with the transferred asset that exceeds a *pro rata* share of that bank's claim on the asset, whether through subordination provisions or other credit enhancement techniques. Residual interests generally include credit-enhancing interest-only strips, spread accounts, cash collateral accounts, retained subordinated interests and other forms of over-collateralization, and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the bank to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold. Residual interests generally do not include interests purchased from a third party, except that purchased credit-enhancing interest-only strips are residual interests.

(13) *Risk participation* means a participation in which the originating bank remains liable to the beneficiary for the full amount of an obligation (*e.g.* a direct credit substitute) notwithstanding that another party has acquired a participation in that obligation.

(14) *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures into securities that can be sold to investors. Securitization includes transactions that generally create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

(15) *Structured finance program* means a program where receivable interests and asset-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured finance programs allocate credit risks, generally, between the participants and the credit enhancement provided to the program.

(16) *Traded position* means a position or asset-backed security retained, assumed or issued in connection with a securitization that is externally rated, where there is a reasonable expectation that, in the near future, the rating will be relied upon by:

(i) Unaffiliated investors to purchase the position; or

(ii) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan or repurchase agreement.

(b) *Credit equivalent amounts and risk weights of recourse obligations and direct credit substitutes*—(1) *General rule for determining the credit-equivalent amount.* Except as otherwise provided, the credit-equivalent amount for a recourse obligation or direct credit substitute is the full amount of the credit-enhanced assets for which the bank directly or indirectly retains or assumes credit risk multiplied by a 100% conversion factor. Thus, a bank that extends a partial direct credit

substitute, *e.g.,* a financial standby letter of credit that absorbs the first 10 percent of loss on a transaction, must maintain capital against the full amount of the assets being supported.

(2) *Risk-weight factor.* To determine the bank's risk-weighted assets for an off-balance sheet recourse obligation or a direct credit substitute, the credit equivalent amount is assigned to the risk category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral. For a direct credit substitute that is an on-balance sheet asset, *e.g.*, a purchased subordinated security, a bank must calculate risk-weighted assets using the amount of the direct credit substitute and the full amount of the assets it supports, *i.e.,* all the more senior positions in the structure. The treatment covered in this paragraph (b) is subject to the low-level exposure rule provided in section II.B.5(h)(1) of this appendix A.

(c) *Credit equivalent amount and risk weight of participations in, and syndications of, direct credit substitutes.* Subject to the low-level exposure rule provided in section II.B.5(h)(1) of this appendix A, the credit equivalent amount for a participation interest in, or syndication of, a direct credit substitute (excluding purchased credit-enhancing interest-only strips) is calculated and risk weighted as follows:

(1) *Treatment for direct credit substitutes for which a bank has conveyed a risk participation.* In the case of a direct credit substitute in which a bank has conveyed a risk participation, the full amount of the assets that are supported by the direct credit substitute is converted to a credit equivalent amount using a 100% conversion factor. However, the *pro rata* share of the credit equivalent amount that has been conveyed through a risk participation is then assigned to whichever risk-weight category is lower: the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral, or the risk-weight category appropriate to the party acquiring the participation. The *pro rata* share of the credit equivalent amount that has not been participated out is assigned to the risk-weight category appropriate to the obligor, guarantor, or collateral. For example, the *pro rata* share of the full amount of the assets supported, in whole or in part, by a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or an OECD bank is assigned to the 20 percent risk category.[13]

(2) *Treatment for direct credit substitutes in which the bank has acquired a risk participation.* In the case of a direct credit substitute in which the bank has acquired a risk participation, the acquiring bank's *pro rata* share of the direct credit substitute is multiplied by the full amount of the assets that are supported by the direct credit substitute and converted using a 100% credit conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(3) *Treatment for direct credit substitutes related to syndications.* In the case of a direct credit substitute that takes the form of a syndication where each party is obligated only for its *pro rata* share of the risk and there is no recourse to the originating entity, each bank's credit equivalent amount will be calculated by multiplying only its pro rata share of the assets supported by the direct credit substitute by a 100% conversion factor. The resulting credit equivalent amount is then assigned to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(d) *Externally rated positions: credit-equivalent amounts and risk weights.*—(1) *Traded positions.* With respect to a recourse obligation, direct credit substitute, residual interest (other than a credit-enhancing interest-only strip) or mortgage- or asset-backed security that is a ''traded position'' and that has received an external rating on a long-term position that is one grade below investment grade or better or a short-term position that is investment grade, the bank may multiply the face amount of the position by the appropriate risk weight, determined in accordance with Table A or B of this appendix A, as appropriate.[14] If a traded position receives more than one external rating, the lowest rating will apply.

TABLE A

Long-term rating category	Examples	Risk weight (In percent)
Highest or second highest investment grade	AAA, AA	20
Third highest investment grade	A	50
Lowest investment grade	BBB	100
One category below investment grade	BB	200

TABLE B

Short-term rating category	Examples	Risk weight (In percent)
Highest investment grade	A–1, P–1	20
Second highest investment grade	A–2, P–2	50
Lowest investment grade	A–3, P–3	100

[13] A risk participation with a remaining maturity of one year or less that is conveyed to a non-OECD bank is also assigned to the 20 percent risk category.

[14] Stripped mortgage-backed securities and similar instruments, such as interest-only strips that are not credit-enhancing and principal-only strips, must be assigned to the 100% risk category.

(2) *Non-traded positions.* A recourse obligation, direct credit substitute, residual interest (but not a credit-enhancing interest-only strip) or mortgage- or asset-backed security extended in connection with a securitization that is not a ''traded position'' may be assigned a risk weight in accordance with section II.B.5(d)(1) of this appendix A if:

(i) It has been externally rated by more than one NRSRO;

(ii) It has received an external rating on a long-term position that is one category below investment grade or better or a short-term position that is investment grade by all NRSROs providing a rating;

(iii) The ratings are publicly available; and

(iv) The ratings are based on the same criteria used to rate traded positions. If the ratings are different, the lowest rating will determine the risk category to which the recourse obligation, direct credit substitute, residual interest, or mortgage- or asset-backed security will be assigned.

(e) *Senior positions not externally rated.* For a recourse obligation, direct credit substitute, residual interest or mortgage- or asset-backed security that is not externally rated but is senior in all features to a traded position (including collateralization and maturity), a bank may apply a risk weight to the face amount of the senior position in accordance with section II.B.5(d)(1) of this appendix A, based upon the risk weight of the traded position, subject to any current or prospective supervisory guidance and the bank satisfying the FDIC that this treatment is appropriate. This section will apply only if the traded position provides substantial credit support for the entire life of the unrated position.

(f) *Residual interests*—(1) *Concentration limit on credit-enhancing interest-only strips.* In addition to the capital requirement provided by section II.B.5(f)(2) of this appendix A, a bank must deduct from Tier 1 capital the face amount of all credit-enhancing interest-only strips in excess of 25 percent of Tier 1 capital in accordance with § 325.5(f)(3).

(2) *Credit-enhancing interest-only strip capital requirement.* After applying the concentration limit to credit-enhancing interest-only strips in accordance with § 325.5(f)(3), a bank must maintain risk-based capital for a credit-enhancing interest-only strip, equal to the remaining face amount of the credit-enhancing interest-only strip (net of the remaining proportional amount of any existing associated deferred tax liability recorded on the balance sheet), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred credit-enhancing interest-only strip will be treated as if the credit-enhancing interest-only strip was retained by the bank and not transferred.

(3) *Other residual interests capital requirement.* Except as otherwise provided in section II.B.5(d) or (e) of this appendix A, a bank must maintain risk-based capital for a residual interest (excluding a credit-enhancing interest-only strip) equal to the face amount of the residual interest (net of any existing associated deferred tax liability recorded on the balance sheet), even if the amount of risk-based capital required to be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred residual interest will be treated as if the residual interest was retained by the bank and not transferred.

(4) *Residual interests and other recourse obligations.* Where the aggregate capital requirement for residual interests (including credit-enhancing interest-only strips) and recourse obligations arising from the same transfer of assets exceed the full risk-based capital requirement for assets transferred, a bank must maintain risk-based capital equal to the greater of the risk-based capital requirement for the residual interest as calculated under sections II.B.5(f)(2) through (3) of this appendix A or the full risk-based capital requirement for the assets transferred.

(g) *Positions that are not rated by an NRSRO.* A bank's position (other than a residual interest) in a securitization or structured finance program that is not rated by an NRSRO may be risk-weighted based on the bank's determination of the credit rating of the position, as specified in Table C of this appendix A, multiplied by the face amount of the position. In order to qualify for this treatment, the bank's system for determining the credit rating of the position must meet one of the three alternative standards set out in section II.B.5(g)(1) through (3) of this appendix A.

TABLE C

Rating category	Examples	Risk Weight (In percent)
Investment grade	BBB or better	100
One category below investment grade	BB	200

(1) *Internal risk rating used for asset-backed programs.* A bank extends a direct credit substitute (but not a purchased credit-enhancing interest-only strip) to an asset-backed commercial paper program sponsored by the bank and the bank is able to demonstrate to the satisfaction of the FDIC, prior to relying upon its use, that the bank's internal credit risk rating system is adequate. Adequate internal credit risk rating systems usually contain the following criteria:[15]

(i) The internal credit risk rating system is an integral part of the bank's risk management system that explicitly incorporates the full range of risks arising from a bank's participation in securitization activities;

(ii) Internal credit ratings are linked to measurable outcomes, such as the probability that the position will experience any loss, the position's expected loss given default, and the degree of variance in losses given default on that position;

(iii) The internal credit risk rating system must separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of a particular securitization transaction;

(iv) The internal credit risk rating system identifies gradations of risk among ''pass'' assets and other risk positions;

[15] The adequacy of a bank's use of its internal credit risk rating system must be demonstrated to the FDIC considering the criteria listed in this section and the size and complexity of the credit exposures assumed by the bank.

(v) The internal credit risk rating system must have clear, explicit criteria (including for subjective factors), that are used to classify assets into each internal risk grade;

(vi) The bank must have independent credit risk management or loan review personnel assigning or reviewing the credit risk ratings;

(vii) An internal audit procedure should periodically verify that internal risk ratings are assigned in accordance with the bank's established criteria;

(viii) The bank must monitor the performance of the internal credit risk ratings assigned to nonrated, nontraded direct credit substitutes over time to determine the appropriateness of the initial credit risk rating assignment and adjust individual credit risk ratings, or the overall internal credit risk ratings system, as needed; and

(ix) The internal credit risk rating system must make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

(2) *Program Ratings.* A bank extends a direct credit substitute or retains a recourse obligation (but not a residual interest) in connection with a structured finance program and an NRSRO has reviewed the terms of the program and stated a rating for positions associated with the program. If the program has options for different combinations of assets, standards, internal credit enhancements and other relevant factors, and the NRSRO specifies ranges of rating categories to them, the bank may apply the rating category applicable to the option that corresponds to the bank's position. In order to rely on a program rating, the bank must demonstrate to the FDIC's satisfaction that the credit risk rating assigned to the program meets the same standards generally used by NRSROs for rating traded positions. The bank must also demonstrate to the FDIC's satisfaction that the criteria underlying the NRSRO's assignment of ratings for the program are satisfied for the particular position issued by the bank. If a bank participates in a securitization sponsored by another party, the FDIC may authorize the bank to use this approach based on a program rating obtained by the sponsor of the program.

(3) *Computer Program.* A bank is using an acceptable credit assessment computer program that has been developed by an NRSRO to determine the rating of a direct credit substitute or recourse obligation (but not a residual interest) extended in connection with a structured finance program. In order to rely on the rating determined by the computer program, the bank must demonstrate to the FDIC's satisfaction that ratings under the program correspond credibly and reliably with the ratings of traded positions. The bank must also demonstrate to the FDIC's satisfaction the credibility of the program in financial markets, the reliability of the program in assessing credit risk, the applicability of the program to the bank's position, and the proper implementation of the program.

(h) *Limitations on risk-based capital requirements*—(1) *Low-level exposure rule.* If the maximum exposure to loss retained or assumed by a bank in connection with a recourse obligation, a direct credit substitute, or a residual interest is less than the effective risk-based capital requirement for the credit-enhanced assets, the risk-based capital required under this appendix A is limited to the bank's maximum contractual exposure, less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply when a bank provides credit enhancement beyond any contractual obligation to support assets it has sold.

(2) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a bank holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, capital is required to support the recourse obligation plus the percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of capital required for the on-balance sheet asset and the recourse obligation, however, is limited to the capital requirement for the underlying loans, calculated as if the bank continued to hold these loans as an on-balance sheet asset.

(3) *Related on-balance sheet assets.* If a recourse obligation or direct credit substitute also appears as a balance sheet asset, the asset is risk-weighted only under this section II.B.5 of this appendix A, except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, the on-balance sheet servicing assets and the related recourse obligations or direct credit substitutes must both be separately risk weighted and incorporated into the risk-based capital calculation.

(i) *Alternative Capital Calculation for Small Business Obligations.*

(1) *Definitions.* For purposes of this section II.B. 5(i):

(i) *Qualified bank means a bank that:*

(A) Is well capitalized as defined in § 325.103(b)(1) without applying the capital treatment described in this section II.B.5(i), or

(B) Is adequately capitalized as defined in § 325.103(b)(2) without applying the capital treatment described in this section II.B.5(i) and has received written permission by order of the FDIC to apply the capital treatment described in this section II.B.5(i).

(iii) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR part 121 pursuant to 15 U.S.C. 632.

(2) *Capital and reserve requirements.* Notwithstanding the risk-based capital treatment outlined in any other paragraph (other than paragraph (i) of this section II.B.5), with respect to a transfer with recourse of a small business loan or a lease to a small business of personal property that is a sale under generally accepted accounting principles, and for which the bank establishes and maintains a non-capital reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the bank under the recourse arrangement; a qualified bank may elect to include only the face amount of its recourse in its risk-weighted assets for purposes of calculating the bank's risk-based capital ratio.

(3) *Limit on aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified bank with respect to transfers of small business loans and leases to small businesses of personal property and included in the risk-weighted assets of the bank as described in section II.B.5(i)(2) of this appendix A may not exceed 15 percent of the bank's total risk-based capital, unless the FDIC specifies a greater amount by order.

(4) *Bank that ceases to be qualified or that exceeds aggregate limit.* If a bank ceases to be a qualified bank or exceeds the aggregate limit in section II.B.5(i)(3) of this appendix A, the bank may continue to apply the capital treatment described in section II.B.5(i)(2) of this appendix A to transfers of small business loans and leases to small businesses of personal property that occurred when the bank was qualified and did not exceed the limit.

(5) *Prompt correction action not affected.* (i) A bank shall compute its capital without regard to this section II.B.5(i) for purposes of prompt corrective action (12 U.S.C. 1831o) unless the bank is a well capitalized bank (without applying the capital treatment described in this section

II.B.5(i)) and, after applying the capital treatment described in this section II.B.5(i), the bank would be well capitalized.

(ii) A bank shall compute its capital without regard to this section II.B.5(i) for purposes of 12 U.S.C. 1831o(g) regardless of the bank's capital level.

* * * * *

C. * * *

Category 2–20 Percent Risk Weight.

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d. This category also includes recourse obligations, direct credit substitutes, residual interests (other than a credit-enhancing interest-only strip) and asset- or mortgage-backed securities rated in the highest or second highest investment grade category, e.g., AAA, AA, in the case of long-term ratings, or the highest rating category, e.g., A–1, P–1, in the case of short-term ratings.

Category 3—50 Percent Risk Weight.

* * * * *

b. * * *[30] * * *

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d. This category also includes recourse obligations, direct credit substitutes, residual interests (other than a credit-enhancing interest-only strip) and asset- or mortgage-backed securities rated in the third highest investment grade category, e.g., A, in the case of long-term ratings, or the second highest rating category, e.g., A–2, P–2, in the case of short-term ratings.

Category 4—100 Percent Risk Weight. (a) All assets not included in the categories above in section II.C of this appendix A, except the assets specifically included in the 200 percent category below in section II.C of this appendix A and assets that are otherwise risk weighted in accordance with section II.B.5 of this appendix A, are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

(b) This category includes:

(1) Long-term claims on, and the portions of long-term claims that are guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk;[33]

(2) All claims on foreign and domestic private-sector obligors not included in the categories above in section II.C of this appendix A (including loans to nondepository financial institutions and bank holding companies);

(3) Claims on commercial firms owned by the public sector;

(4) Customer liabilities to the bank on acceptances outstanding involving standard risk claims;[34]

(5) Investments in fixed assets, premises, and other real estate owned;

(6) Common and preferred stock of corporations, including stock acquired for debts previously contracted;

(7) Commercial and consumer loans (except those assigned to lower risk categories due to recognized guarantees or collateral and loans secured by residential property that qualify for a lower risk weight);

(8) Recourse obligations, direct credit substitutes, residual interests (other than a credit-enhancing interest-only strip) and asset-or mortgage-backed securities rated in the lowest investment grade category, e.g., BBB, as well as certain positions (but not residual interests) which the bank rates pursuant to section section II.B.5(g) of this appendix A.;

(9) Industrial-development bonds and similar obligations issued under the auspices of states or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, not the government entity, is obligated to pay the principal and interest;

(10) All obligations of states or political subdivisions of countries that do not belong to the OECD-based group; and

(11) Stripped mortgage-backed securities and similar instruments, such as interest-only strips that are not credit-enhancing and principal-only strips.

(c) The following assets also are assigned a risk weight of 100 percent if they have not already been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banks; deferred tax assets; and mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships.

Category 5—200 Percent Risk Weight. This category includes:

(a) Externally rated recourse obligations, direct credit substitutes, residual interests (other than a credit-enhancing interest-only strip), and asset- and mortgage-backed securities that are rated one category below the lowest investment grade category, e.g., BB, to the extent permitted in section II.B.5(d) of this appendix A; and

(b) A position (but not a residual interest) in a securitization or structured finance program that is not rated by an NRSRO for which the bank determines that the credit risk is equivalent to one category below investment grade, e.g., BB, to the extent permitted in section II.B.5.(g) of this appendix A.

* * * * *

D. * * *

The face amount of an off-balance sheet item is generally incorporated into the risk-weighted assets in two steps. The face amount is first multiplied by a credit conversion factor, except as otherwise specified in section II.B.5 of this appendix A for direct credit substitutes and recourse obligations. The resultant credit equivalent amount is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.[35] Table III to this appendix A sets forth the conversion factors for various types of off-balance-sheet items.

1. *Items With a 100 Percent Conversion Factor.* (a) Except as otherwise provided in section II.B.5. of this appendix A, the full amount of an asset or transaction supported, in whole or in part, by a direct credit substitute or a recourse obligation. Direct credit substitutes and recourse obligations are defined in section II.B.5. of this appendix A.

[30] The types of loans that qualify as loans secured by multifamily residential properties are listed in the instructions for preparation of the Consolidated Reports of Condition and Income. In addition, from the standpoint of the selling bank, when a multifamily residential property loan is sold subject to a *pro rata* loss sharing arrangement which provides for the purchaser of the loan to share in any loss incurred on the loan on a *pro rata* basis with the selling bank, that portion of the loan is not subject to the risk-based capital standards. In connection with sales of multifamily residential property loans in which the purchaser of the loan shares in any loss incurred on the loan with the selling bank on other than a *pro rata* basis, the selling bank must treat these other loss sharing arrangements in accordance with section II.B.5 of this appendix A.

[33] Such assets include all non-local currency claims on, and the portions of claims that are guaranteed by, non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by the bank.

[34] Customer liabilities on acceptances outstanding involving nonstandard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claims. Portions of acceptances conveyed as risk participations to U.S. depository institutions or foreign banks are assigned to the 20 percent risk category appropriate to short-term claims guaranteed by U.S. depository institutions and foreign banks.

[35] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II.B. of this appendix A.

(b) Sale and repurchase agreements, if not already included on the balance sheet, and forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with drawdown which is certain at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[36] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

(c) Securities lent by a bank are treated in one of two ways, depending upon whether the lender is exposed to risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the securities transaction is excluded from the risk-based capital calculation. On the other hand, if a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if applicable, to the collateral delivered to the lending bank or the independent custodian acting on the lending bank's behalf.

* * * * *

III. Minimum Risk-Based Capital Ratio

Subject to section II.B.5. of this appendix A, banks generally will be expected to meet a minimum ratio of qualifying total capital to risk-weighted assets of 8 percent, of which at least 4 percentage points should be in the form of core capital (Tier 1). Any bank that does not meet the minimum risk-based capital ratio, or whose capital is otherwise considered inadequate, generally will be expected to develop and implement a capital plan for achieving an adequate level of capital, consistent with the provisions of this risk-based capital framework and § 325.104, the specific circumstances affecting the individual bank, and the requirements of any related agreements between the bank and the FDIC.

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum requirements
(1) Core Capital (Tier 1)	Must equal or exceed 4% of weighted-risk assets.
(a) Common stockholders' equity	No limit.[1]
(b)Noncumulative perpetual preferred stock and any related surplus.	No limit.[1]
(c) Minority interest in equity accounts of consolidated	No limit.[1]
(d) Less: All intangible assets other than certain mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships.	([2]).
(e) Less: Certain credit-enhancing interest-only strips	([3]).
(f) Less: Certain deferred tax assets	([4]).
(2) Supplementary Capital (Tier 2)	Total of tier 2 is limited to 100% of tier 1.[5]
(a) Allowance for loan and lease losses	Limited to 1.25% of weighted-risk assets.[5]
(b) Unrealized gains on certain equity securities.[6]	Limited to 45% of pretax net unrealized gains.[6].
(c) Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more) and any related surplus.	No limit within tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
(d) Auction rate and similar preferred stock (both cumulative and non-cumulative).	No limit within Tier 2.
(e) Hybrid capital instruments (including mandatory convertible debt securities).	No limit within Tier 2.
(f) Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of five years or more).	Term subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1[5] and amortized for capital purposes as they approach maturity.
(3) Deductions (from sum of tier 1 and tier 2):	
(a) Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes.	
(b) Intentional, reciprocal cross-holdings of capital securities issued by banks.	
(c) Other deductions (such as investment in other subsidiaries or joint ventures) as determined by supervisory authority.	On a case-by-case basis or as a matter of policy after formal consideration of relevant issues.
(4) Total Capital	Must equal or exceed 8% or weighted-risk assets.

[1] No express limits are placed on the amounts of nonvoting common, noncumulative perpetual preferred stock, and minority interests that may be recognized as part of Tier 1 capital. However, voting common stockholders' equity capital generally will be expected to be the dominant form of Tier 1 capital and banks should avoid undue reliance on other Tier 1 capital elements.

[2] The amounts of mortgage servicing assets, nonmortgage servicing assets and purchased credit card relationships that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f). All deductions are for capital purposes only; deductions would not affect accounting treatment.

[3] The amounts of credit-enhancing interest-only strips that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f).

[4] Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

[5] Amounts in excess of limitations are permitted but do not qualify as capital.

[6] Unrealized gains on equity securities are subject to the capital limitations set forth in paragraph I.A2.(f) of appendix A to part 325.

[36] Forward forward deposits accepted are treated as interest rate contracts.

* * * * *

Table II.—Summary of Risk Weights and Risk Categories.

* * * * *

Category 2—20 Percent Risk Weight.

* * * * *

(12) Recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips) and asset- or mortgage-backed securities rated in either of the two highest investment grade categories, e.g., AAA or AA, in the case of long-term ratings, or the highest rating category, e.g., A–1, P–1, in the case of short-term ratings.

Category 3—50 Percent Risk Weight.

* * * * *

(3) Recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips) and asset- or mortgage-backed securities rated in the third-highest investment grade category, e.g., A, in the case of long-term ratings, or the second highest rating category, e.g., A–2, P–2, in the case of short-term ratings.

* * * * *

Category 4—100 Percent Risk Weight.

* * * * *

(9) Recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips) and asset- or mortgage-backed securities rated in the lowest investment grade category, e.g., BBB, as well as certain positions (but not residual interests) which the bank rates pursuant to section II.B.5(g) of this appendix A.

(10) All other assets, including any intangible assets that are not deducted from capital, and the credit equivalent amounts [4] of off-balance sheet items not assigned to a different risk category.

Category 5—200 Percent Risk Weight.

(1) Externally rated recourse obligations, direct credit substitutes, residual interests (other than credit-enhancing interest-only strips), and asset- and mortgage-backed securities that are rated one category below the lowest investment grade category, e.g., BB, to the extent permitted in section II.B.5(d) of this appendix A; and

(2) A position (but not a residual interest) extended in connection with a securitization or structured financing program that is not rated by an NRSRO for which the bank determines that the credit risk is equivalent to one category below investment grade, e.g., BB, to the extent permitted in section II.B.5.(g) of this appendix A.

* * * * *

Table III.—Credit Conversion Factors for Off-Balance Sheet Items.

100 Percent Conversion Factor.

(1) The full amount of assets supported by direct credit substitutes and recourse obligations (unless a different treatment is otherwise specified). For risk participations in such arrangements acquired by the bank, the full amount of assets supported by the main obligation multiplied by the acquiring bank's percentage share of the risk participation.

(2) Acquisitions of risk participations in bankers acceptances.

(3) Sale and repurchase agreements, if not already included on the balance sheet.

* * * * *

7. In appendix B to part 325:

A. Amend section I by changing ''CAMEL'' to ''CAMELS'' in the first undesignated paragraph and in the second undesignated paragraph by removing ''by December 31, 1992 (and at least 7.25 percent by December 31, 1990).''

B. Amend section III by removing the second undesignated paragraph.

C. In section IV. paragraph A:

i. Amend the first undesignated paragraph by removing ''in accordance with Accounting Principles Board Opinion No. 16, as amended,';

ii. Remove the second undesignated paragraph; and

iii. Amend the new second undesignated paragraph by changing ''§ 325(t)'' to ''§ 325.2(v).''

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of October, 2001.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by:

A. Revising the definitions of direct credit substitute and recourse;

B. Adding definitions of credit derivative, credit-enhancing interest-only strips, credit-enhancing representations and warranties, face amount, financial asset, financial standby letter of credit, nationally recognized statistical rating organization, performance-based standby letter of credit, residual interest, risk participation, securitization, servicer cash advance, structured financing program, and traded position; and

C. Removing the definition of high quality mortgage related securities to read as follows:

§ 567.1 Definitions.

* * * * *

Credit derivative. The term *credit derivative* means a contract that allows one party (the protection purchaser) to transfer the credit risk of an asset or off-balance sheet credit exposure to another party (the protection provider). The value of a credit derivative is dependent, at least in part, on the credit performance of a ''referenced asset.''

Credit-enhancing interest-only strip. (1) The term *credit-enhancing interest-only strip* means an on-balance sheet asset that, in form or in substance:

(i) Represents the contractual right to receive some or all of the interest due on transferred assets; and

(ii) Exposes the savings association to credit risk directly or indirectly associated with the transferred assets that exceeds its *pro rata* share of the savings association's claim on the assets whether through subordination provisions or other credit enhancement techniques.

(2) OTS reserves the right to identify other cash flows or related interests as a credit-enhancing interest-only strip. In determining whether a particular interest cash flow functions as a credit-enhancing interest-only strip, OTS will consider the economic substance of the transaction.

Credit-enhancing representations and warranties. (1) The term *credit-enhancing representations and warranties* means representations and warranties that are made or assumed in connection with a transfer of assets (including loan servicing assets) and that obligate a savings association to protect investors from losses arising from credit risk in the assets transferred or loans serviced.

(2) Credit-enhancing representations and warranties include promises to protect a party from losses resulting from the default or nonperformance of

[4] In general, for each off-balance sheet item, a conversion factor (see Table III) must be applied to determine the ''credit equivalent amount'' prior to assigning the off-balance sheet item to a risk weight category.

another party or from an insufficiency in the value of the collateral.

(3) Credit-enhancing representations and warranties do not include:

(i) Early-default clauses and similar warranties that permit the return of, or premium refund clauses covering, qualifying mortgage loans for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within one year of the date of the transfer;

(ii) Premium refund clauses covering assets guaranteed, in whole or in part, by the United States government, a United States government agency, or a United States government-sponsored enterprise, provided the premium refund clause is for a period not to exceed 120 days from the date of transfer; or

(iii) Warranties that permit the return of assets in instances of fraud, misrepresentation or incomplete documentation.

* * * * *

Direct credit substitute. The term *direct credit substitute* means an arrangement in which a savings association assumes, in form or in substance, credit risk associated with an on-or off-balance sheet asset or exposure that was not previously owned by the savings association (third-party asset) and the risk assumed by the savings association exceeds the *pro rata* share of the savings association's interest in the third-party asset. If a savings association has no claim on the third-party asset, then the savings association's assumption of any credit risk is a direct credit substitute. Direct credit substitutes include:

(1) Financial standby letters of credit that support financial claims on a third party that exceed a savings association's *pro rata* share in the financial claim;

(2) Guarantees, surety arrangements, credit derivatives, and similar instruments backing financial claims that exceed a savings association's *pro rata* share in the financial claim;

(3) Purchased subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

(4) Credit derivative contracts under which the savings association assumes more than its *pro rata* share of credit risk on a third-party asset or exposure;

(5) Loans or lines of credit that provide credit enhancement for the financial obligations of a third party;

(6) Purchased loan servicing assets if the servicer is responsible for credit losses or if the servicer makes or assumes credit-enhancing representations and warranties with respect to the loans serviced. Servicer cash advances as defined in this section are not direct credit substitutes; and

(7) Clean-up calls on third party assets. However, clean-up calls that are 10 percent or less of the original pool balance and that are exercisable at the option of the savings association are not direct credit substitutes.

* * * * *

Face amount. The term *face amount* means the notational principal, or face value, amount of an off-balance sheet item or the amortized cost of an on-balance sheet asset.

Financial asset. The term *financial asset* means cash or other monetary instrument, evidence of debt, evidence of an ownership interest in an entity, or a contract that conveys a right to receive or exchange cash or another financial instrument from another party.

Financial standby letter of credit. The term *financial standby letter of credit* means a letter of credit or similar arrangement that represents an irrevocable obligation to a third-party beneficiary:

(1) To repay money borrowed by, or advanced to, or for the account of, a second party (the account party); or

(2) To make payment on behalf of the account party, in the event that the account party fails to fulfill its obligation to the beneficiary.

* * * * *

Nationally recognized statistical rating organization (NRSRO). The term *nationally recognized statistical rating organization* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

* * * * *

Performance-based standby letter of credit. The term *performance-based standby letter of credit* means any letter of credit, or similar arrangement, however named or described, which represents an irrevocable obligation to the beneficiary on the part of the issuer to make payment on account of any default by a third party in the performance of a nonfinancial or commercial obligation. Such letters of credit include arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

* * * * *

Recourse. The term *recourse* means a savings association's retention, in form or in substance, of any credit risk directly or indirectly associated with an asset it has sold (in accordance with generally accepted accounting principles) that exceeds a *pro rata* share of that savings association's claim on the asset. If a savings association has no claim on a asset it has sold, then the retention of any credit risk is recourse. A recourse obligation typically arises when a savings association transfers assets in a sale and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if a savings association provides credit enhancement beyond any contractual obligation to support assets it has sold. Recourse obligations include:

(1) Credit-enhancing representations and warranties made on transferred assets;

(2) Loan servicing assets retained pursuant to an agreement under which the savings association will be responsible for losses associated with the loans serviced. Servicer cash advances as defined in this section are not recourse obligations;

(3) Retained subordinated interests that absorb more than their *pro rata* share of losses from the underlying assets;

(4) Assets sold under an agreement to repurchase, if the assets are not already included on the balance sheet;

(5) Loan strips sold without contractual recourse where the maturity of the transferred portion of the loan is shorter than the maturity of the commitment under which the loan is drawn;

(6) Credit derivatives issued that absorb more than the savings association's *pro rata* share of losses from the transferred assets; and

(7) Clean-up calls on assets the savings association has sold. However, clean-up calls that are 10 percent or less of the original pool balance and that are exercisable at the option of the savings association are not recourse arrangements.

* * * * *

Residual interest. (1) The term *residual interest* means any on-balance sheet asset that:

(i) Represents an interest (including a beneficial interest) created by a transfer that qualifies as a sale (in accordance with generally accepted accounting principles) of financial assets, whether through a securitization or otherwise; and

(ii) Exposes a savings association to credit risk directly or indirectly associated with the transferred asset that exceeds a *pro rata* share of that savings association's claim on the asset, whether through subordination provisions or other credit enhancement techniques.

(2) Residual interests generally include credit-enhancing interest-only strips, spread accounts, cash collateral accounts, retained subordinated interests (and other forms of overcollateralization), and similar assets that function as a credit enhancement.

(3) Residual interests further include those exposures that, in substance, cause the savings association to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold.

(4) Residual interests generally do not include assets purchased from a third party. However, a credit-enhancing interest-only strip that is acquired in any asset transfer is a residual interest.

* * * * *

Risk participation. The term *risk participation* means a participation in which the originating party remains liable to the beneficiary for the full amount of an obligation (*e.g.,* a direct credit substitute), notwithstanding that another party has acquired a participation in that obligation.

* * * * *

Securitization. The term *securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures that can be sold to investors. *Securitization* includes transactions that create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

Servicer cash advance. The term *servicer cash advance* means funds that a residential mortgage servicer advances to ensure an uninterrupted flow of payments, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the loan. A servicer cash advance is not a recourse obligation or a direct credit substitute if:

(1) The servicer is entitled to full reimbursement and this right is not subordinated to other claims on the cash flows from the underlying asset pool; or

(2) For any one loan, the servicer's obligation to make nonreimbursable advances is contractually limited to an insignificant amount of the outstanding principal amount on that loan.

* * * * *

Structured financing program. The term *structured financing program* means a program where receivable interests and asset-or mortgage-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured financing programs allocate credit risk, generally, between the participants and credit enhancement provided to the program.

* * * * *

Traded position. The term *traded position* means a position retained, assumed, or issued in connection with a securitization that is rated by a NRSRO, where there is a reasonable expectation that, in the near future, the rating will be relied upon by:

(1) Unaffiliated investors to purchase the security; or

(2) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

* * * * *

3. Section 567.2 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(1) *Risk-based capital requirement.* (i) A savings association's minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured under § 567.6 of this part.

* * * * *

4. Amend § 567.5 by adding a new paragraph (a)(2)(iii) to read as follows:

§ 567.5 Components of capital.

(a) * * *

(2) * * *

(iii) Credit-enhancing interest-only strips that are not includable in core capital under § 567.12 of this part are deducted from assets and capital in computing core capital.

* * * * *

5. Section 567.6 is amended by:

A. Revising paragraph (a) introductory text;

B. Revising paragraph (a)(1) introductory text and paragraphs (a)(1)(ii)(R), (a)(1)(iii)(C), (a)(1)(iv)(J), and (a)(1)(iv)(M);

C. Removing and reserving paragraphs (a)(1)(ii)(H) and (a)(1)(iv)(N);

D. Revising paragraph (a)(2) introductory text;

E. Removing and reserving paragraphs (a)(2)(i)(A) and (C);

F. Revising paragraph (a)(2)(i)(B);

G. Revising paragraph (a)(2)(ii)(A);

H. Removing paragraph (a)(3); and

I. Adding paragraph (b) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) *Risk-weighted assets.* Risk-weighted assets equal risk-weighted on-balance sheet assets (computed under paragraph (a)(1) of this section), plus risk-weighted off-balance sheet activities (computed under paragraph (a)(2) of this section), plus risk-weighted recourse obligations, direct credit substitutes, and certain other positions (computed under paragraph (b) of this section). Assets not included (*i.e.,* deducted from capital) for purposes of calculating capital under § 567.5 are not included in calculating risk-weighted assets.

(1) *On-balance sheet assets.* Except as provided in paragraph (b) of this section, risk-weighted on-balance sheet assets are computed by multiplying the on-balance sheet asset amounts times the appropriate risk-weight categories. The risk-weight categories are:

* * * * *

(ii) * * *

(R) Claims on, or guaranteed by depository institutions other than the central bank, incorporated in a non-OECD country, with a remaining maturity of one year or less;

* * * * *

(iii) * * *

(C) Privately-issued mortgage-backed securities (*i.e.,* those that do not carry the guarantee of a government or government sponsored entity) representing an interest in qualifying mortgage loans or qualifying multifamily mortgage loans. If the security is backed by qualifying multifamily mortgage loans, the savings association must receive timely payments of principal and interest in accordance with the terms of the security. Payments will generally be considered timely if they are not 30 days past due;

* * * * *

(iv) * * *

(J) Debt securities not otherwise described in this section;

* * * * *

(M) Interest-only strips receivable, other than credit-enhancing interest-only strips;

* * * * *

(2) *Off-balance sheet items.* Except as provided in paragraph (b) of this section, risk-weighted off-balance sheet items are determined by the following two-step process. First, the face amount of the off-balance sheet item must be multiplied by the appropriate credit conversion factor listed in this paragraph (a)(2). This calculation translates the face amount of an off-balance sheet exposure into an on-

balance sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk-weight category using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(1) of this section, *provided* that the maximum risk weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. The following are the credit conversion factors and the off-balance sheet items to which they apply.

(i) * * *

(B) Risk participations purchased in bankers' acceptances;

* * * * *

(ii) * * *

(A) Transaction-related contingencies, including, among other things, performance bonds and performance-based standby letters of credit related to a particular transaction;

* * * * *

(b) *Recourse obligations, direct credit substitutes, and certain other positions.* (1) *In general.* Except as otherwise permitted in this paragraph (b), to determine the risk-weighted asset amount for a recourse obligation or a direct credit substitute (but not a residual interest):

(i) Multiply the full amount of the credit-enhanced assets for which the savings association directly or indirectly retains or assumes credit risk by a 100 percent conversion factor. (For a direct credit substitute that is an on-balance sheet asset (e.g., a purchased subordinated security), a savings association must use the amount of the direct credit substitute and the full amount of the asset its supports, *i.e.,* all the more senior positions in the structure); and

(ii) Assign this credit equivalent amount to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral. Paragraph (a)(1) of this section lists the risk-weight categories.

(2) *Residual interests.* Except as otherwise permitted under this paragraph (b), a savings association must maintain risk-based capital for residual interests as follows:

(i) *Credit-enhancing interest-only strips.* After applying the concentration limit under § 567.12(e)(2) of this part, a saving association must maintain risk-based capital for a credit-enhancing interest-only strip equal to the remaining amount of the strip (net of any existing associated deferred tax liability), even if the amount of risk-based capital that must be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred credit-enhancing interest-only strip are treated as if the strip was retained by the savings association and was not transferred.

(ii) *Other residual interests.* A saving association must maintain risk-based capital for a residual interest (excluding a credit-enhancing interest-only strip) equal to the face amount of the residual interest (net of any existing associated deferred tax liability), even if the amount of risk-based capital that must be maintained exceeds the full risk-based capital requirement for the assets transferred. Transactions that, in substance, result in the retention of credit risk associated with a transferred residual interest are treated as if the residual interest was retained by the savings association and was not transferred.

(iii) *Residual interests and other recourse obligations.* Where a savings association holds a residual interest (including a credit-enhancing interest-only strip) and another recourse obligation in connection with the same transfer of assets, the savings association must maintain risk-based capital equal to the greater of:

(A) The risk-based capital requirement for the residual interest as calculated under paragraph (b)(2)(i) through (ii) of this section; or

(B) The full risk-based capital requirement for the assets transferred, subject to the low-level recourse rules under paragraph (b)(7) of this section.

(3) *Ratings-based approach*—(i) *Calculation.* A savings association may calculate the risk-weighted asset amount for an eligible position described in paragraph (b)(3)(ii) of this section by multiplying the face amount of the position by the appropriate risk weight determined in accordance with Table A or B of this section.

Note: Stripped mortgage-backed securities or other similar instruments, such as interest-only and principal-only strips, that are not credit enhancing must be assigned to the 100% risk-weight category.

TABLE A

Long term rating category	Risk weight (In percent)
Highest or second highest investment grade	20
Third highest investment grade	50
Lowest investment grade	100
One category below investment grade	200

TABLE B

Short term rating category	Risk weight (In percent)
Highest investment grade	20
Second highest investment grade	50
Lowest investment grade	100

(ii) *Eligibility.* (A) *Traded positions.* A position is eligible for the treatment described in paragraph (b)(3)(i) of this section, if:

(*1*) The position is a recourse obligation, direct credit substitute, residual interest, or asset- or mortgage-backed security and is not a credit-enhancing interest-only strip;

(*2*) The position is a traded position; and

(*3*) The NRSRO has rated a long term position as one grade below investment grade or better or a short term position as investment grade. If two or more NRSROs assign ratings to a traded position, the savings association must use the lowest rating to determine the appropriate risk-weight category under paragraph (b)(3)(i) of this section.

(B) *Non-traded positions.* A position that is not traded is eligible for the treatment described in paragraph (b)(3)(i) of this section if:

(*1*) The position is a recourse obligation, direct credit substitute, residual interest, or asset- or mortgage-backed security extended in connection with a securitization and is not a credit-enhancing interest-only strip;

(*2*) More than one NRSRO rate the position;

(*3*) All of the NRSROs that provide a rating rate a long term position as one grade below investment grade or better or a short term position as investment grade. If the NRSROs assign different ratings to the position, the savings association must use the lowest rating to determine the appropriate risk-weight category under paragraph (b)(3)(i) of this section;

(*4*) The NRSROs base their ratings on the same criteria that they use to rate securities that are traded positions; and

(*5*) The ratings are publicly available.

(C) *Unrated senior positions.* If a recourse obligation, direct credit substitute, residual interest, or asset- or mortgage-backed security is not rated by an NRSRO, but is senior or preferred in all features to a traded position (including collateralization and maturity), the savings association may risk-weight the face amount of the senior position under paragraph (b)(3)(i) of this section, based on the rating of the traded position, subject to supervisory guidance. The savings association must

satisfy OTS that this treatment is appropriate. This paragraph (b)(3)(i)(C) applies only if the traded position provides substantive credit support to the unrated position until the unrated position matures.

(4) *Certain positions that are not rated by NRSROs.* (i) *Calculation.* A savings association may calculate the risk-weighted asset amount for eligible position described in paragraph (b)(4)(ii) of this section based on the savings association's determination of the credit rating of the position. To risk-weight the asset, the savings association must multiply the face amount of the position by the appropriate risk weight determined in accordance with Table C of this section.

TABLE C

Rating category	Risk weight (In percent)
Investment grade	100
One category below investment grade	200

(ii) *Eligibility.* A position extended in connection with a securitization is eligible for the treatment described in paragraph (b)(4)(i) of this section if it is not rated by an NRSRO, is not a residual interest, and meets the one of the three alternative standards described in paragraph (b)(4)(ii)(A), (B), or (C) below of this section:

(A) *Position rated internally.* A direct credit substitute, but not a purchased credit-enhancing interest-only strip, is eligible for the treatment described under paragraph (b)(4)(i) of this section, if the position is assumed in connection with an asset-backed commercial paper program sponsored by the savings association. Before it may rely on an internal credit risk rating system, the saving association must demonstrate to OTS's satisfaction that the system is adequate. Adequate internal credit risk rating systems typically:

(*1*) Are an integral part of the savings association's risk management system that explicitly incorporates the full range of risks arising from the savings association's participation in securitization activities;

(*2*) Link internal credit ratings to measurable outcomes, such as the probability that the position will experience any loss, the expected loss on the position in the event of default, and the degree of variance in losses in the event of default on that position;

(*3*) Separately consider the risk associated with the underlying loans or borrowers, and the risk associated with the structure of the particular securitization transaction;

(*4*) Identify gradations of risk among ''pass'' assets and other risk positions;

(*5*) Use clear, explicit criteria to classify assets into each internal rating grade, including subjective factors;

(*6*) Employ independent credit risk management or loan review personnel to assign or review the credit risk ratings;

(*7*) Include an internal audit procedure to periodically verify that internal risk ratings are assigned in accordance with the savings association's established criteria;

(*8*) Monitor the performance of the assigned internal credit risk ratings over time to determine the appropriateness of the initial credit risk rating assignment, and adjust individual credit risk ratings or the overall internal credit risk rating system, as needed; and

(*9*) Make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

(B) *Program ratings.* (*1*) A recourse obligation or direct credit substitute, but not a residual interest, is eligible for the treatment described in paragraph (b)(4)(i) of this section, if the position is retained or assumed in connection with a structured finance program and an NRSRO has reviewed the terms of the program and stated a rating for positions associated with the program. If the program has options for different combinations of assets, standards, internal or external credit enhancements and other relevant factors, and the NRSRO specifies ranges of rating categories to them, the savings association may apply the rating category applicable to the option that corresponds to the savings association's position.

(*2*) To rely on a program rating, the savings association must demonstrate to OTS's satisfaction that that the credit risk rating assigned to the program meets the same standards generally used by NRSROs for rating traded positions. The savings association must also demonstrate to OTS's satisfaction that the criteria underlying the assignments for the program are satisfied by the particular position.

(*3*) If a savings association participates in a securitization sponsored by another party, OTS may authorize the savings association to use this approach based on a program rating obtained by the sponsor of the program.

(C) *Computer program.* A recourse obligation or direct credit substitute, but not a residual interest, is eligible for the treatment described in paragraph (b)(4)(i) of this section, if the position is extended in connection with a structured financing program and the savings association uses an acceptable credit assessment computer program to determine the rating of the position. An NRSRO must have developed the computer program and the savings association must demonstrate to OTS's satisfaction that the ratings under the program correspond credibly and reliably with the rating of traded positions.

(5) *Alternative capital computation for small business obligations*—(i) *Definitions.* For the purposes of this paragraph (b)(5):

(A) *Qualified savings association* means a savings association that:

(*1*) Is well capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in this paragraph (b)(5); or

(*2*) Is adequately capitalized as defined in § 565.4 of this chapter without applying the capital treatment described in this paragraph (b)(5) and has received written permission from the OTS to apply that capital treatment.

(B) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR 121 pursuant to 15 U.S.C. 632.

(ii) *Capital requirement.* Notwithstanding any other provision of this paragraph (b), with respect to a transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified savings association may elect to include only the amount of its recourse in its risk-weighted assets. To qualify for this election, the savings association must establish and maintain a reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the savings association under the recourse obligation.

(iii) *Aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified savings association with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the savings association as described in paragraph (b)(5)(ii) of this section, may not exceed 15 percent of the association's total capital computed under § 567.5(c).

(iv) *Savings association that ceases to be a qualified savings association or that exceeds aggregate limits.* If a savings association ceases to be a qualified savings association or exceeds the aggregate limit described in paragraph (b)(5)(iii) of this section, the savings association may continue to apply the capital treatment described in

paragraph (b)(5)(ii) of this section to transfers of small business loans and leases of personal property that occurred when the association was a qualified savings association and did not exceed the limit.

(v) *Prompt corrective action not affected.* (A) A savings association shall compute its capital without regard to this paragraph (b)(5) of this section for purposes of prompt corrective action (12 U.S.C. 1831o), unless the savings association is adequately or well capitalized without applying the capital treatment described in this paragraph (b)(5) and would be well capitalized after applying that capital treatment.

(B) A savings association shall compute its capital requirement without regard to this paragraph (b)(5) for the purposes of applying 12 U.S.C. 1381o(g), regardless of the association's capital level.

(6) *Risk participations and syndications of direct credit substitutes.* A savings association must calculate the risk-weighted asset amount for a risk participation in, or syndication of, a direct credit substitute as follows:

(i) If a savings association conveys a risk participation in a direct credit substitute, the savings association must convert the full amount of the assets that are supported by the direct credit substitute to a credit equivalent amount using a 100 percent conversion factor. The savings association must assign the *pro rata* share of the credit equivalent amount that was conveyed through the risk participation to the lower of: The risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral; or the risk-weight category appropriate to the party acquiring the participation. The savings association must assign the *pro rata* share of the credit equivalent amount that was not participated out to the risk-weight category appropriate to the obligor, after considering any associated guarantees or collateral.

(ii) If a savings association acquires a risk participation in a direct credit substitute, the savings association must multiply its *pro rata* share of the direct credit substitute by the full amount of the assets that are supported by the direct credit substitute, and convert this amount to a credit equivalent amount using a 100 percent conversion factor. The savings association must assign the resulting credit equivalent amount to the risk-weight category appropriate to the obligor in the underlying transaction, after considering any associated guarantees or collateral.

(iii) If the savings association holds a direct credit substitute in the form of a syndication where each savings association or other participant is obligated only for its *pro rata* share of the risk and there is no recourse to the originating party, the savings association must calculate the credit equivalent amount by multiplying only its *pro rata* share of the assets supported by the direct credit substitute by a 100 percent conversion factor. The savings association must assign the resulting credit equivalent amount to the risk-weight category appropriate to the obligor in the underlying transaction after considering any associated guarantees or collateral.

(7) *Limitations on risk-based capital requirements*—(i) *Low-level exposure rule.* If the maximum contractual exposure to loss retained or assumed by a savings association is less than the effective risk-based capital requirement, as determined in accordance with this paragraph (b), for the assets supported by the savings association's position, the risk-based capital requirement is limited to the savings association's contractual exposure less any recourse liability account established in accordance with generally accepted accounting principles. This limitation does not apply when a savings association provides credit enhancement beyond any contractual obligation to support assets it has sold.

(ii) *Mortgage-related securities or participation certificates retained in a mortgage loan swap.* If a savings association holds a mortgage-related security or a participation certificate as a result of a mortgage loan swap with recourse, it must hold risk-based capital to support the recourse obligation and that percentage of the mortgage-related security or participation certificate that is not covered by the recourse obligation. The total amount of risk-based capital required for the security (or certificate) and the recourse obligation is limited to the risk-based capital requirement for the underlying loans, calculated as if the savings association continued to hold these loans as an on-balance sheet asset.

(iii) *Related on-balance sheet assets.* If an asset is included in the calculation of the risk-based capital requirement under this paragraph (b) and also appears as an asset on the savings association's balance sheet, the savings association must risk-weight the asset only under this paragraph (b), except in the case of loan servicing assets and similar arrangements with embedded recourse obligations or direct credit substitutes. In that case, the savings association must separately risk-weight the on-balance sheet servicing asset and the related recourse obligations and direct credit substitutes under this section, and incorporate these amounts into the risk-based capital calculation.

(8) *Obligations of subsidiaries.* If a savings association retains a recourse obligation or assumes a direct credit substitute on the obligation of a subsidiary that is not an includable subsidiary, and the recourse obligation or direct credit substitute is an equity or debt investment in that subsidiary under generally accepted accounting principles, the face amount of the recourse obligation or direct credit substitute is deducted for capital under §§ 567.5(a)(2) and 567.9(c). All other recourse obligations and direct credit substitutes retained or assumed by a savings association on the obligations of an entity in which the savings association has an equity investment are risk-weighted in accordance with this paragraph (b).

6. Amend § 567.9 by revising paragraph (c)(1) to read as follows:

§ 567.9 Tangible capital.

* * * * *

(c) * * *

(1) Intangible assets (as defined in § 567.1), servicing assets, and credit-enhancing interest-only strips not includable in tangible capital under § 567.12.

* * * * *

7. Section 567.11 is amended by redesignating paragraph (c) as paragraph (c)(1) and adding new paragraphs (c)(2) and (3) to read as follows:

§ 567.11 Reservation of authority.

* * * * *

(c) * * *

(2) Notwithstanding § 567.6 of this part, OTS will look to the substance of a transaction and may find that the assigned risk weight for any asset, or credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on the savings association. OTS may require the savings association to apply another risk-weight, credit equivalent amount, or credit conversion factor that OTS deems appropriate.

(3) If this part does not specifically assign a risk weight, credit equivalent amount, or credit conversion factor, OTS may assign any risk weight, credit equivalent amount, or credit conversion factor that it deems appropriate. In making this determination, OTS will consider the risks associated with the asset or off-balance sheet item as well as other relevant factors.

8. Section 567.12 is amended by:

A. Revising the section heading;

B. Revising paragraph (a);

C. Adding a new paragraph (b)(4), and

D. Revising paragraph (e) to read as follows:

§ 567.12 Intangible assets, servicing assets, and credit-enhancing interest-only strips.

(a) *Scope.* This section prescribes the maximum amount of intangible assets, servicing assets, and credit-enhancing interest-only strips that savings associations may include in calculating tangible and core capital.

(b) * * *

(4) Credit-enhancing interest-only strips may be included (that is not deducted) in computing core capital subject to the restrictions of this section, and may be included in tangible capital in the same amount.

* * * * *

(e) *Core capital limitations.* (1) *Servicing assets and purchased credit card relationships.* (i) The maximum aggregate amount of servicing assets and purchased credit card relationships that may be included in core capital is limited to the lesser of:

(A) 100 percent of the amount of core capital; or

(B) The amount of servicing assets and purchased credit card relationships determined in accordance with paragraph (d) of this section.

(ii) In addition to the aggregate limitation in paragraph (e)(1)(i) of this section, a sublimit applies to purchased credit card relationships and non mortgage-related serving assets. The maximum allowable amount of these two types of assets combined is limited to the lesser of:

(A) 25 percent the amount of core capital; and

(B) The amount of purchased credit card relationships and non mortgage-related servicing assets determined in accordance with paragraph (d) of this section.

(2) *Credit-enhancing interest-only strips.* The maximum aggregate amount of credit-enhancing interest-only strips that may be included in core capital is limited to 25 percent of the amount of core capital. Purchased and retained credit-enhancing interest-only strips, on a non-tax adjusted basis, are included in the total amount that is used for purposes of determining whether a savings association exceeds the core capital limit.

(3) *Computation.* (i) For purposes of computing the limits and sublimit in this paragraph (e), core capital is computed before the deduction of disallowed servicing assets, disallowed credit card relationships, and disallowed credit-enhancing interest-only strips.

(ii) A savings association may elect to deduct disallowed servicing assets and credit-enhancing interest-only strips on a basis that is net of any associated deferred tax liability.

Dated: October 25, 2001.

Ellen Seidman,

Director, Office of Thrift Supervision.

[FR Doc. 01–29179 Filed 11–28–01; 8:45 am]

BILLING CODES 4810–33–P, 6210–01–P, 6714–01–P 6720–01–P

Federal Register

Thursday,
November 29, 2001

Part III

The President

Executive Order 13236—Waiver of Dual Compensation Provisions of the Central Intelligence Agency Retirement Act of 1964

Federal Register
Vol. 66, No. 230
Thursday, November 29, 2001

Presidential Documents

Title 3—

The President

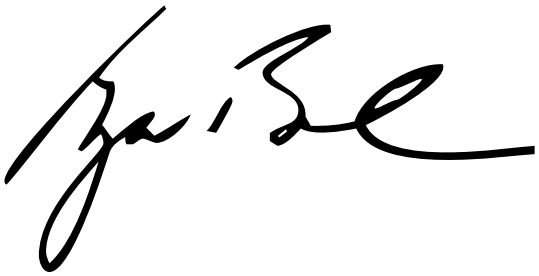
Executive Order 13236 of November 27, 2001

Waiver of Dual Compensation Provisions of the Central Intelligence Agency Retirement Act of 1964

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 292 of the Central Intelligence Agency Retirement Act of 1964, as amended (50 U.S.C. 2141), and in order to conform the Central Intelligence Agency Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

Section 1. The Director of Central Intelligence may waive the application of the dual compensation reduction provisions of sections 271 and 273 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2111 and 2113) for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances. Employees who receive both salary and annuity pursuant to this authority may not earn additional retirement benefits during this period of employment. This authority may be delegated as appropriate.

Sec. 2. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or any other person.



THE WHITE HOUSE,
November 27, 2001.

[FR Doc. 01–29831
Filed 11–28–01; 8:45 am]
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